



Circular and Temporary Migration

Empirical Evidence, Current Policy
Practice and Future Options
in LUXEMBOURG

Luxembourg

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Abbreviations

ADEM	Administration de l'Emploi (National Employment Office)
CAMPO	Centro de Apoio ao Migrante no País de Origem (Support Center for Migrants in the Country of Origin)
CCTS	Commission Consultative pour Travailleurs (Advisory Committee for Workers)
COSL	Comité Olympique et Sportif Luxembourgeois (Luxembourg Olympic and Sporting Committee)
CES	Conseil Economique et Social (Economic and Social Council)
EC	European Commission
EEA	European Economic Area
EEC	European Economic Community
EMN	European Migration Network
EU	European Union
GFMD	Global Forum on Migration and Development
IGSS	Inspection générale de la Sécurité Sociale (General Inspectorate of Social Security)
ILO	International Labour Organization
IOM	International Organization for Migration
ITM	Inspection du travail et des mines (Labour Inspectorate)
MOU	Memorandum of Understanding
MYO	Migrer les yeux ouverts (Migrate with open eyes)
NCP	National Contact Point
NGO	Non-governmental Organization
STATEC	Institut National de la Statistique et des Études Économiques du Grand-Duché du Luxembourg (National Statistical Institute of Luxembourg)

Foreword

The opinions and interpretations expressed in this report are those of the authors. They do not necessarily reflect the positions of the Luxembourg Ministry of Family and Integration, or the Ministry of Foreign Affairs nor do they represent national government policy.

The present report was drafted by Anne Thormann and Anne Koch, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Ass.-Prof. Dr. Christel Baltes-Löhr. Adolfo Sommaribas was responsible for the processing and preparation of the statistical data. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Dr. Claudia Hartmann-Hirsch, (CEPS/Institute), Germaine Thill (STATEC), Sylvie Prommenschenkel (Ministry of Foreign Affairs) and Marc Hayot (OLAI Reception and Integration Agency, Ministry of Family and Integration).

Executive Summary

Circular and temporary migrations have become important concepts at the global and EU-level and have elicited remarkable interest among policy-makers and scholars, notably in relation to the wider issue of migration and development. The preparation of the national contribution to the EMN study on circular and temporary migration has shown that, in Luxembourg, both political and civil society actors are unfamiliar with the concept of circular migration, which is virtually absent in political or societal debates. To a lesser degree, this also applies to temporary migration.

There are no empirical studies on the subject-matter in Luxembourg. The present report therefore constitutes the first publication that addresses the topic in the national context, systematically brings together relevant sources and analyses national policy, legislation and available data.

Given the lack of a national definition of both circular and temporary migration based on national legislation, the first part of the report has focused on the elaboration of working definitions of these terms.

The national policy approach and vision on circular and temporary migration have been analysed in the main part of the report. In order to identify the approach to circular and temporary migration and policy preferences in the context of Luxembourg, an analysis of national legislation (including the legal provisions for relevant categories of immigrants, long-term residence status, plural nationality and the portability of social benefits) and public documents was conducted. The co-operation with third countries in the context of circular migration was also addressed.

Empirical insights drawn from the archival analysis and stakeholder interviews show limited relevance of the topic in the context of Luxembourg. This is most likely due to the mainly European character of immigration to Luxembourg, the disproportionate importance of cross-border mobility as compared to immigration from third countries as well as the size of the country. Both the government and civil society perspectives reflect the unfamiliarity with the concept and show that reservation and scepticism prevail with regard to how circular migration programmes can be successfully implemented (government perspective), what the real policy intentions behind those programmes are (NGO perspective) and to what extent

circular or temporary labour migration programmes can be made to work for development (both government and NGO perspective). There are no specific programmes in place to regulate circular or temporary labour migration to and from Luxembourg, with the exception of a few ad-hoc and small-scale initiatives that are presented in the report. Despite the lack of programmes in Luxembourg, a compilation of best practices for the management of circular and temporary migration programmes was produced based on a literature review, underlining the importance for small-scale programmes that are incorporated into a comprehensive immigration policy on the one hand and development policy on the other, while stressing the context-dependent and relational nature of these programmes.

The analysis of existing statistical data and empirical evidence in order to quantify current ‘spontaneous’ circular and temporary migration to and from Luxembourg has illustrated the shortcomings of current data collection systems in Luxembourg as these are still based on the so-called ‘permanent settlement migration paradigm’ according to which migration is understood as a one-time, lasting change of usual residence across borders. As such, current national data collection systems are inappropriate to capture circular and temporary migration patterns and available data do not allow to draw conclusions on potential circular and temporary migration patterns to and from Luxembourg. For this reason, several recommendations for the improvement of data collection with regard to temporary and circular migration are presented in this report.

1. INTRODUCTION

Circular and temporary migration is increasingly being discussed in policy circles both at the European Union and international level¹ and promoted as a triple-win solution bringing benefits to countries of destination, countries of origin and migrant workers themselves. Circular migration in particular is advocated as a major mechanism to satisfy the growing demand for labour in destination countries that cannot be met locally, to promote development in countries of origin and counteract brain drain, and to reduce irregular immigration through opening up channels of legal immigration of a definite and limited period of time.² At the same time, these policy advancements have received widespread skepticism and criticism from a large range of actors including scholars, non-governmental organizations, trade unions and international organizations such as the International Labour Organization (ILO). In addition to the vagueness of the policy concept, their main points of criticism are that managed circular and temporary migration will primarily serve the interests of the countries of destination and that the potential development impact on countries of origin will only be marginal given the expected small number of participating migrants and their short duration of stay. In addition, critics point to the lack of empirical evidence that irregular immigration can be reduced through the promotion of circular and temporary migration. They are also concerned about the protection of migrants' rights, the lack of opportunities for integration and risk of marginalization of migrants as well as potential human rights violations in connection with the enforcement of return.³

Despite the considerable number of academic publications and policy documents on circular and temporary migration and the migration-development nexus, there is currently no

¹ Wickramasekara (2011) points to the Global Forum on Migration and Development and the European Union as the two current processes which strive to promote the concept of circular migration. He also provides an analysis of other global initiatives and approaches to circular migration, including the Global Commission on International Migration, the UN-Secretary-General's Report to the United Nation's High-level Dialogue on International Migration and Development 2006, the United Nations Development Programme's Human Development Report 2009, the International Organization for Migration, and the Global Forum on Migration and Development. Ruhs (2005), Abella (2006) and Hugo (2009) provide a detailed discussion of temporary labour migration programmemes and identify best practices.

² See, e.g., European Commission (2007), Global Forum on Migration and Development (2007a; 2007b), United Nations Development Programme (2009), and International Organization for Migration (2010).

³ See, e.g., Angenendt (2007), Biekmann and Muskens (2007), Vertovec (2007), Carrera and Hernández i Sagrera (2009), Heckmann *et al.* (2009), Wiesbrock and Schneider (2009), Kathmann (2011), and Wickramasekara (2011).

comprehensive overview of already existing schemes and legislation in European countries that facilitate temporary and circular migration patterns.⁴ In addition, only very limited empirical evidence and statistical data on the circularity of migration or the frequency of temporary migration exist. Current census data, registration procedures, and surveys that seek to measure the entry and exit of different categories of migrants are largely inadequate.⁵

The European Migration Network (EMN)⁶ aims, within its mandate, to enhance the knowledge base and improve the methodology for data on temporary and circular migration through a comparative study produced by the participating National Contact Points (NCPs). Notably, the study aims to identify and analyse the approach to circular and temporary migration and policy preferences in the participating Member States. Existing statistical data and empirical evidence for circular and temporary migration shall be reviewed to determine to what extent migration is circular or temporary in nature. Possible approaches for measuring these phenomena shall be examined. NCPs are also asked to identify any ‘best practices’ as regards the management of circular and temporary migration. A synthesis report will summarize the main findings of the national reports and provide overall conclusions and recommendations. As such, the study shall, in the framework of the EMN, contribute to the development of EU policy proposals on circular and temporary migration.⁷

The outcome of the comparative EMN study is primarily intended for policy-makers at the national and EU-level and other decision-makers who concern themselves with migration patterns and the management of migratory flows, but also for labour market parties, academic researchers, non-governmental organizations as well as interested members of the public. The paper is concerned only with persons who migrate for employment, higher education and training, but not for tourism, family visits, religious activities, or in connection with cultural exchange. In line with the mandate of the EMN, the focus of the study is on third-country

⁴ The majority of available literature focuses either on general discussions of circular and temporary migration illustrated by typical examples, e.g., Agunias and Newland (2007), Newland *et al.* (2008), or on circular and/or temporary migration in particular regions and countries, e.g., Agunias (2008), Cassarino (2008), Fargues (2008), Khoo *et al.* (2008), and Hugo (2009). Wickramasekara (2011) compiled scattered information on repeat migration in search for evidence of circular migration patterns.

⁵ See Bell (2000), Constant and Zimmermann (2007), Köhler (2008), Black and Skeldon (2009), and Santo Tomas and Summers *et al.* (2009).

⁶ Council Decision 2008/381/EC of 14 May 2008 established the legal basis for the EMN. For further information about the EMN, its objectives, activities and output, please visit www.emn.europa.eu

⁷ European Migration Network (2010).

nationals, i.e. persons who are not citizens of a Member State of the European Union including stateless persons. However, given the predominantly European character of migration to Luxembourg⁸ and the significant level of cross-border commuting, mobility of EU citizens is included in the analysis where considered valuable.

The preparation of the national contribution to the EMN study has shown that, in Luxembourg, actors both in politics and civil society are unfamiliar with the concept of circular migration and it is virtually absent in political or societal debates. To a lesser degree, this also applies to temporary migration. There are no empirical studies on the subject-matter in Luxembourg. The present report therefore constitutes the first publication that addresses the topic in the national context and systematically brings together relevant sources and analyses national policy, legislation and statistics. For the same reason, it was considered valuable to put the national analysis in perspective and outline the international and EU policy debate on circular and temporary migration. In doing so, we adopted a critical approach as it allows to scrutinize the topic from different angles and to provide the reader with the full range of perspectives on (managed) circular and temporary migration.

In the first part of the report, it will be explained how the report was generated. This is followed by a discussion of definitions of circular and temporary migration. Given the lack of a national definition of these terms based on national legislation, working definitions will be proposed for the purpose of this study. Subsequent to an outline and discussion of the EU concept of circular migration, the so-called triple-win discourse and the main points of criticism of managed circular and temporary migration will be summarized. In the main part of the report, the national policy approach and vision on circular and temporary migration as well as relevant legislation will be analysed. The latter includes the legal provisions for relevant categories of immigrants, long-term residence status, plural nationality and the portability of social benefits. The co-operation with third countries in the context of circular migration will also be addressed. In the data section, available statistics will be presented and discussed and recommendations given for improving data collection to (better) capture temporary and circular migration movements. The last part of the report will summarize the main findings, draw conclusions and put forward a number of ‘best practices’ for the

⁸ Thill-Ditsch (2010).

management of circular and temporary migration.

1.1 Methodology

National reports are produced by the respective National Contact Points (NCPs) on the legal and policy situation in their Member State according to common specifications. Subsequently, a comparative synthesis report is generated by the European Commission with its service provider giving the key findings from each national report, highlighting the most important aspects and placing them as much as possible within an EU perspective. The various national accounts and the summary report are made publicly available.

The EMN engages primarily in desk research, i.e., it collects and analyses data and information already available or published at the Member State or international level. The present report was produced by drawing upon a number of different sources, all of which are listed in the bibliography by type of document. This includes sources of national and EU legal documents which are referred to in the report.

Literature review

Initially, a review of academic-oriented literature as well as policy-related publications on circular and temporary migration in various national contexts was conducted. These included peer-reviewed journal articles, chapters of an edited volume, working papers, discussion papers, background papers for conferences, papers presented at conferences, and policy briefs. There are, to the authors' knowledge, no empirical studies on current (circular and temporary) patterns of migration, particularly of third-country nationals, in Luxembourg. In light of the general lack of conceptual clarity about circular and temporary migration and the virtual absence of a political and societal discussion on these forms of migration in Luxembourg, the review proved to be particularly useful for identifying the main arguments in the international and EU debate on circular and temporary migration, clarifying definitions and political concepts, as well as putting forward suggestions for improved data collection and best practices.

Archival analysis

An archival analysis was carried out to determine the national vision, policy and legislation in relation to circular and temporary migration. This involved the collection and analysis of relevant policy and legal documents, including government programmes, official speeches, the commentary on the draft articles of the current Law of 29 August 2008 on the Free Movement of Persons and Immigration, opinions of different stakeholders on the bill, minutes of public parliamentary sessions, and responses to parliamentary inquiries. Annual reports of ministries and administrations, press and other media documents and the recent decisions of a conference of migrant associations from the Greater Region were included as well.

Semi-structured interviews

Given that Luxembourg has little experience with current circular and temporary migration as envisaged by the European Commission, it was considered useful to conduct semi-structured stakeholder interviews. Five anonymous interviews were held with political representatives, public officers and experts in November 2010. In addition, the author drew on four interviews that have been conducted in July and August 2010 for the national report to the EMN study on ‘Satisfying Labour Demand through Migration’. Interview partners were selected according to their expertise and the information and insights they would be able to provide on particular aspects of the subject-matter. All interviews were transcribed and analysed systematically. Moreover, three practitioners in the field of migration, asylum and international exchange were interviewed to identify aspects relevant in the national context as well as further sources of information.

Workshop

As part of the preparation of this report, a workshop was held by the National contact point Luxembourg at the University of Luxembourg on 23 September 2010. The workshop was attended by 35 representatives of migrant associations and advocacy groups and aimed at incorporating their attitudes, thoughts and experiences with regard to temporary and circular migration in this report. Workshop participants were asked about their understanding of circular and temporary migration. They discussed definition-related issues, potential

favourable conditions for circular and temporary migration, as well as the broader question of integration for circular and temporary migrants. The insights gained during the workshop have been incorporated at various points in the report.

National conference

At the third National Conference of the EMN National Contact Point for Luxembourg taking place on 25 November 2010⁹, the author introduced the topic to the audience and presented the preliminary results of the given report, thereby putting emphasis on national legislation and co-operation with third countries. The subsequent feedback and raised questions by the audience helped to further refine the results.

Statistical data

Relevant data was requested from national data providers, i.e., the National Statistical Institute of Luxembourg (STATEC) and the Directorate for Immigration at the Ministry of Foreign Affairs, as well as other public bodies (Joint Center for Social Security, Labour Inspectorate, and University of Luxembourg). However, as will be discussed in more detail in the data section, national data collection systems are still based on the so-called ‘permanent migration settlement paradigm’ and largely inappropriate to capture temporary and circular migration patterns to and from Luxembourg.¹⁰ Therefore, we cannot provide any information about the scale and scope of ‘naturally occurring’ temporary and circular migration.

As indicated above, the three main problems encountered in the study were (1) the lack of a common definition; (2) the non-existence of a political and societal debate on circular migration at the national level and the resulting dearth of available information; and (3) the paucity of available statistics and qualitative research studies on circular and temporary migration in Luxembourg

⁹ The conference is documented on the website of the National Contact Point for Luxembourg within the EMN, <http://www.emnluxembourg.lu/type-agenda/3%C3%A8me-conf%C3%A9rence-nationale-du-point-de-contact-luxembourgeois>

¹⁰ Bell (2000), Agunias and Newland (2007), Köhler (2008), Black and Skeldon (2009).

1.2 Definitions and Concepts

1.2.1 Circular Migration

Lack of a common definition

The current policy debate on circular migration is clouded by a lack of conceptual clarity. In fact, there is no standard definition and the same will very much depend on whether circular migration is defined from an academic, legal or policy point of view. Scholars often adopt a wider, more generic definition describing and analyzing the actual phenomenon. Many of them also critically assess recent policy developments. Legal instruments record and formally express legally enforceable obligations and rights. Relevant international migrant worker instruments such as those by International Labour Organization (ILO) or the United Nations (UN)¹¹ either refer to migrants without any distinction by type of migration or they use the term ‘temporary migration’ without any reference to ‘circular migration’. As a matter of fact, circular migration does not refer to any particular category of migrants with, for example, a particular legal status.¹² The European Commission promotes circular migration as a policy tool to achieve specific objectives as set forth in the EC Communication (2007) 248final on circular migration and mobility partnerships between the European Union and third countries. However, the EC concept is ambiguous regarding the focus and rationale of managed circular migration and its differentiation from temporary migration programmes.

In Luxembourg, the concept of circular migration does not officially exist, neither in legislation, administrative practice nor migration statistics. There is no appropriate data to determine to what extent the migration pattern of EU citizens and third-country nationals residing in Luxembourg is of circular, and for that matter temporary, nature. There are no empirical studies on the topic. To date, there have been no programmes established for the promotion of circular migration. It is therefore not possible to use a national definition based

¹¹ The three specific international instruments that explicitly define the application of human and labour rights to migrant workers are ILO Convention 97 on Migration for Employment (of 1949), ILO Convention 143 on migrant workers (Supplementary Provisions) (of 1975), and the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families.

¹² Fargues (2008: 1).

on national legislation as foreseen in the study specifications. In the following, we will therefore draw on available literature and develop a working definition of circular migration for the purpose of this study. We will delineate it from other forms of migration, particularly temporary migration. We will then discuss the EU concept and outline the arguments for and against circular migration as a policy tool commonly put forward in the current policy debate.

Working definition

There are basically two types of circular migration. First, there is *de facto* circular migration, also called ‘naturally or spontaneously occurring’ circular migration, and second, managed circular migration as a policy tool.¹³ This distinction reflects to a great extent the difference between the academic, particularly sociological and anthropological, perspective and the policy point of view on circular migration that was outlined above. It is important to keep this distinction in mind for the subsequent discussion.

Factual circular migration is an age-old pattern of mobility, most notably demonstrated in internal, rural-urban and seasonal migration or in border areas.¹⁴ Cassarino calls this lived reality in a territorial area ‘embedded circularity’, taking place at the grass-roots level and being marked by frequent exchanges of goods, contacts and interactions and symbiotic relationships between people and places.¹⁵ This type of circular migration does involve legal and irregular migration and occurs predominantly in the context of geographical proximity between places of origin and destination. The recent debates in international and EU policy circles can therefore be considered ‘a new interest in an old form of migration’¹⁶. What is different in the current context is that the discussion focuses on regulated programmes facilitating legal circular migration across large distances and governed either by the origin country or destination country or usually by both through bilateral agreements or other legal instruments.¹⁷ Wickramasekara argues that a working definition of circular migration should include both types of circulation: ‘Opinions on what are the most desirable features or

¹³ E.g., Cremona (2008:1), Newland *et al.* (2008: 3pp).

¹⁴ Vertovec (2007: 5), Wickramasekara (2011: 8).

¹⁵ Cassarino (2008: 3).

¹⁶ Fargues (2008: 5).

¹⁷ Wickramasekara (2011: 11).

attributes of circular migration in relation to policies should be discussed separately from such a working definition'¹⁸.

In the literature, circular migration is described as 'repeated and fluid cross-border mobility'¹⁹; 'movement of migrants to-and-fro between their homelands and foreign places of work'²⁰; 'regular, repeat temporary labour migration'²¹; 'multiple moves, or repeat and circular migration'²²; and 'pendulum-like movement between migrants' country of origin and one or various destination countries'²³. In order to be able to operationalize and eventually measure the phenomenon, it is important to derive the main features of circular migration from these definitions.

Accordingly, circular migration involves

- a) repeated movements involving *more than one migration cycle* (entry, stay, and return) by the *same groups of migrants* (same persons) while the *periods of stay* in the country of destination are *limited in time*
- b) *bi-directional* movements between the country of origin and country of destination *and/or multidirectional movements* involving more than one place of destination.²⁴

As such, circular migration is different from permanent migration which involves long-term settlement in the country of destination and from return migration which involves one emigration and permanent return to the home country. Temporary migration refers to a single movement and return to the country of origin after a limited stay in the country of destination. Circular migration, on the other hand, is temporary migration of a repetitive character between migrants' countries of origin and one or various countries of destination. In other words, migrants leave for abroad before returning to their home countries, on a temporary basis, and then decide to move again either to the previous country of destination or a

¹⁸ Wickramasekara (2011: 16).

¹⁹ Cassarino (2008: 1).

²⁰ Vertovec (2007: 2).

²¹ Vertovec (2007: 3).

²² Constant and Zimmermann (2007: 1).

²³ Cassarino (2008: 1).

²⁴ Cf. Wickramasekara (2011: 16).

different destination.²⁵ Although our working definition refers to circular migration as repeat movements of *more than one* migration cycle, circular migration should in fact be understood as a *fluid* migration pattern that involves several migration cycles of varying durations as suggested by the definitions from the literature ('pendulum-like' or 'back-and-forth' movement). The difference between temporary and circular migration programmes will be outlined in the next section.

The different patterns of migration are shaped not only by the motives, aspirations and decision-making processes of individuals and households, but also by various external and large-scale structural factors and by the way these change over time. Restrictive migration policies and border controls, but also severe political tensions or armed conflict, and geographical distance are some of the obstacles that may hinder individuals from circulating across borders. Or they may make migrants much less inclined to repeatedly return and more likely to bring their families to the country of destination.²⁶ Likewise, intentions to return to the country of origin either on a temporary or permanent basis do not necessarily materialize. Some migrants may find return a very expensive option or they may run the risk of losing their job or even their eligibility for residency in the host country. For others, countries of origin simply do not have the professional or business opportunities that will make return worthwhile. Still others develop such strong ties in their adopted country that they lose interest in returning home for more than an occasional visit.²⁷

Wickramasekara criticizes the claim made by some authors that circular migration would represent the natural preference of many migrants given the lack of thorough empirical evidence that has found that a large part of particularly intercontinental migrants opt for short-term migration.²⁸ He rather argues that skilled workers, who often have the possibility of migrating with their families, may think of long-term migration. Similarly, university students

²⁵ Cassarino (2008: 1).

²⁶ Bell (2000: 11), Constant and Zimmermann (2007: 2), Cassarino (2008: 1).

²⁷ Agunias and Newland (2007: 2).

²⁸ Wickramasekara (2011: 15) mainly refers to the work of the Washington-based Migration Policy Institute which does not provide much supporting evidence for the claim. The examples of *de facto* circular migration provided by Newland *et al.* (2008: 3p.) primarily relate to short-distance and regional migration. The examples they cite for spontaneous circular migration over large distances are primarily transnational movements of well-established higher-income migrants with a secure residency status in the countries of destination and political measures by countries of origin such as dual citizenship and voting rights that aim to maintain strong relationships with their nationals abroad (Newland *et al.* 2008: 3-5).

may embrace the idea of staying on and obtaining skills and experience in countries of destination, or moving to a third country. Low-skilled workers from developing countries, on the other hand, may have no other legal option than migrating under circular or temporary migration programmes.²⁹ Wickramasekara further argues:

‘Migration is always a difficult choice, and there is no reason to assume that migrants would like to go back and return several times rather than stay and settle, or stay on until they can earn and save what they believe to be an adequate sum for comfortable living back home before returning for good. Circulation therefore, is not necessarily an ideal to be pursued by migrants. Circular migration rarely allows for family reunification because of immigration restrictions imposed by destination countries, and it is difficult to suggest that migrants naturally prefer to be without their families in host societies.’³⁰

This position, however, disregards the growing recognition of the increased possibilities that migrants and their families live transnationally and adopt transnational identities. Such a transnational perspective on migration processes has emerged in the early 1990s³¹ and since then has become a new paradigm for the study of cross-border migration and produced a large number of publications. According to proponents of transnationalism, earlier conceptions of immigrants as individuals who uproot themselves from one society to settle and become incorporated into a new country no longer suffice. Today’s migrating population is composed of those whose networks, activities and patterns of life encompass both their host and home societies.³² In this respect, transnationalism can be defined as

‘the processes by which immigrants forge and sustain multi-stranded social relations that link together their societies of origin and settlement. [...] [We call] immigrants who develop and maintain multiple relationships [...] that span borders [...] transmigrants. An

²⁹ Wickramasekara (2011: 23).

³⁰ Wickramasekara (2011: 23).

³¹ Glick Schiller *et al.* (1992), Basch *et al.* (1994), see also Smith and Guarnizo (1998), Pries (1999), Vertovec and Cohen (1999), Faist (2000).

³² Glick Schiller *et al.* (1992).

essential element of transnationalism is the multiplicity of involvements that transmigrants sustain in both home and host societies.³³

They settle and become incorporated in the economy and political institutions, localities, and patterns of daily life in the country in which they reside. However, at the very same time, transmigrants are engaged elsewhere in the sense that they maintain connections, build institutions, conduct transactions, and influence local and national events in the countries from which they emigrated.³⁴ The concept of transnationalism includes phenomena as diverse as import/export immigrant businesses, investments by migrants in the country of origin, regular and sustained links among family members and co-villagers in the countries of origin and settlement, homeland-based cultural and religious organizations that set up branches in the country of settlement, as well as the mobilization of migrants by homeland political parties and social movements, and long-distance diaspora involvement in conflict settings in the country of origin³⁵. Transnational processes are as old as modern nation-states. Contemporary transnationalism had plenty of precedents in early migration history. Yet the current connections of immigrants are of a different order than past immigrant linkages to home societies. What is new about contemporary transmigrants is the high intensity of exchanges, the new modes of transacting business, and the multiplication of activities that require cross-border travel and contacts on a sustained basis.³⁶

For our discussion on circular and temporary migration, it is noteworthy to cite de Haas who argues that

‘[t]his transnationalization of migrants’ lives has challenged assimilationist models of migrant integration, as well as the modernist political construct of the nation-state and citizenship. The implication is that clear-cut dichotomies of ‘origin’ or ‘destination’ and categories such as ‘permanent’, ‘temporary’, and ‘return’ migration are increasingly

³³ Basch *et al.* (1994: 6).

³⁴ Glick Schiller *et al.* (1997: 122).

³⁵ DIASPEACE(‘Diasporas and Peace. Patterns, Trends and Potential of Long-distance Diaspora Involvement in Conflict Settings’) was a multi-disciplinary research project (2008-2011) that sought to generate evidence-based and policy-relevant knowledge about the ways in which diasporas play into the dynamics of conflict and peace in their countries of origin. The empirical focus of the project was on the Horn of Africa. Further information and publications can be found on <http://www.diaspeace.org>

³⁶ Portes *et al.* (1999: 219).

difficult to sustain in a world in which the lives of migrants are characterized by circulation and simultaneous commitment to two or more societies or communities.’³⁷

As such, the promotion of circular migration as a policy tool is in line with the transnationalist view of migration. However, grass-roots transnational activities, so-called ‘transnationalism from below’³⁸, commonly developed on the initiative of immigrants and in reaction to governmental policies and conditions of dependent capitalism and globalization in their search for economic advancement and social recognition.³⁹ Migrants’ personal or collective transnational activities are facilitated by the technological innovations and modern means of communication. In many cases, it involves migrants with a secure legal status in the destination country either through permanent residency or citizenship. It is important to recognize that transmigrants, and for that matter all migrants, represent a wide range of classes, political and economic interests and conflicting gender and power positions. Consequently, it is misleading to assume the existence of a ‘transnational community’ of interest or even shared identity when people participate together in a transnational network. Migration is a selective process, all the more if it is of international and intercontinental nature. Individuals with a higher education, larger and stronger social networks and/or more economic assets are more likely to migrate than those without access to these different forms of capital. Transnational networks of migrants may be even more selective and thus tend to represent a relatively narrow constituency in both the country of origin and destination. One must also be careful not to overstate the potential for autonomy of migrants and migrant networks in a global capitalist system.⁴⁰

Wickramasekara acknowledges these transnational activities but argues that ‘diaspora engagement’ and the potential contributions to home country development have long been

³⁷ de Haas (2010: 247).

³⁸ Smith and Guarnizo (1998) suggest a distinction between cross-border activities initiated and conducted by powerful institutional actors, such as states and multinational corporations (‘transnationalism from above’), and those that are the result of grass-roots initiatives by immigrants and their home country counterparts (‘transnationalism from below’).

³⁹ Portes *et al.* (1999: 220). See also Glick Schiller *et al.* (1992: 9) and Basch *et al.* (1994: 24).

⁴⁰ Crush and McDonald (2002: 11pp). Compare also with the positions of de Haas (2010) and Glick Schiller and Faist (2010) below.

recognized and discussed under diaspora policies⁴¹ (also known under the terms ‘migration and development’ and in France ‘codéveloppement’). He argues that including the temporary return of members of the diaspora for engagement in home country activities into the circular migration policy debate confuses issues because they face a different set of options.⁴² The present report includes the discussion of relevant issues for a number of reasons. Firstly, temporary return of highly qualified permanent migrants to the country of origin is part of the EU concept of circular migration and should not be excluded from the critical assessment. Secondly, the description of national legislation facilitating ‘spontaneous’ repetitive back-and-forth movements is requested by the study specifications. Finally, while Luxembourg has not introduced any circular or temporary migration programmes recently, it is considered worth analyzing the national legislation.

1.2.2 Temporary Migration

While circular migration refers to repeated movements, temporary migration involves a one time only temporary stay and eventual return which closes the migration cycle. While this broad definition does not comprise any political or legal criteria, it has two inherent problems. Firstly, there is no hard and fast rule in regard to which duration of stay can be considered (still) temporary and which (already) permanent. Because this period is undefined, it leads to considerable ambiguity as to what exactly is covered by the term ‘temporary migration’. Secondly, return or temporariness of stay can only be determined *ex post*. As a consequence, definitions of temporary migration based on intentions to return, whether on the side of the migrant or the state, are not suitable.

The present report seeks to avoid these problems by adopting a working definition based on legal criteria. In line with the definition proposed by Abella, we regard as temporary migrants those *foreign-born non-nationals* ‘whose legal status is temporary, regardless of the amount of time they may have actually stayed in a country’⁴³. Usually, foreign nationals are initially

⁴¹ Compare, e.g. Nyberg-Sørensen *et al.* (2002), Skeldon (2008), de Haas (2010), Glick Schiller and Faist (2010). The numerous policy-oriented websites dedicated to the interlinkages between migration and development include www.migrationdevelopment.org, www.eunomad.org and www.gfmd.org.

⁴² Wickramasekara (2011: 17).

⁴³ Abella (2006: 4).

admitted to the country of destination for a definite and limited period of time with the option to solidify their residence status if they wish to do so. However, the renewal of temporary residence permits and even the granting of permanent residence depend on the discretion of the receiving state based on certain (political, economic and other) reasons and criteria rather than acquired by the migrant on the basis of a specified period of residence in the country alone.⁴⁴ We therefore do not concur with Agunias and Newland who, for the purpose of their publication, define permanent migrants not only as migrants with permanent residency or citizenship in the adopted country, but ‘also include those who are holding what are essentially transitional visas: temporary visas but with definite pathways to permanent residency or citizenship’⁴⁵. As such, they seem to take for granted that migrants naturally acquire rights over time and that their residence and employment as temporary migrant is simply a first step toward permanent residence.⁴⁶ Rather, we follow Ruhs’ line of argumentation according to which the key feature of temporary migration (programmes) is that ‘*residence and employment on the basis of a temporary work permit alone does not create an entitlement to stay permanently in the host country*’⁴⁷. This definition implies that migrants whose temporary residence and/or work permits have expired, and who have not been accorded permanent resident status, lose their right to residence in the destination country and are thus expected to return to the country of origin or migrate elsewhere. At the same time, it is important to emphasize that the definition does not exclude the possibility of temporary migrants being eventually granted permanent residence in the country of destination.

For the purpose of this report, we regard as temporary migrants all foreign-born third-country nationals a) who currently have a temporary residence permit (*autorisation de séjour temporaire*) and/or b) who are not eligible for long-term residence status (*statut de résident de longue durée*).

In Luxembourg, the Law of 29 August 2008 on the Free Movement of Persons and Immigration regulates the entry and stay of EU citizens and third-country nationals. According to Article 38, all third-country nationals who wish to stay in Luxembourg for more

⁴⁴ Ruhs (2005: 2p.).

⁴⁵ Agunias and Newland (2007: 3).

⁴⁶ Cf. Ruhs (2005: 2).

⁴⁷ Ruhs (2005: 2).

than three months need to be in possession of either a temporary authorization to stay (*autorisation de séjour temporaire*) or an authorization to stay as long-term resident (*autorisation de séjour de résident de longue durée*).

Temporary authorizations to stay are issued to seven categories of immigrants:

- a) salaried worker (*travailleur salarié*)
- b) self-employed worker (*travailleur indépendant*)
- c) sportsperson (*sportif*)
- d) student, pupil, intern or volunteer (*étudiant, élève, stagiaire ou volontaire*)
- e) researcher (*chercheur*)
- f) family member (*membre de la famille*) and
- g) for private or specific reasons (*pour des raisons d'ordre privé ou particulier*).

The specific conditions and procedures to obtain a temporary authorization to stay differ between the respective categories. Those that are relevant for this report will be outlined in section 2.2.1.

The Law of 29 August 2008 on the Free Movement of Persons and Immigration transposed, amongst others, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Article 80 Section 2 stipulates the categories of third-country nationals that do not qualify for long-term residence status ‘due to the temporary nature of their stay or in light of their uncertain situation’⁴⁸, irrespective of the actual length of their stay in Luxembourg. These include

- a) diplomatic staff and employees of international organizations,
- b) refugees or persons who have applied for recognition as refugees and whose application has not yet given rise to a final decision,

⁴⁸ Chamber of Deputies of the Grand Duchy of Luxembourg (2007: 77).

- c) persons who are authorized to reside in Luxembourg on the basis of a subsidiary or temporary form of protection have applied for authorization to reside on that basis and are awaiting a decision on their status⁴⁹, and, of most relevance to this report,
- d) persons who reside in Luxembourg solely on temporary grounds such as seasonal workers, posted workers and intra-corporate transferees or in cases where their residence permit has been formally limited, as well as
- e) students and trainees.

1.2.3 Managed Circular and Temporary Migration Programmes

Circular and temporary migration can be regulated when institutional mechanisms are implemented to determine the number of admitted migrants, to monitor their limited duration of stay abroad, and to select profiles and skills.⁵⁰ Respective schemes are often based on bilateral agreements between two countries (in the EU context, one Member State and a third country), including less binding Memoranda of Understanding (MoU), or by unilateral entry schemes or multilateral agreements.⁵¹ They may take on a variety of forms and policy structures. Broadly speaking, they may differ with regard to: 1) the mechanisms for admitting migrants including the existence of bilateral recruitment agreements with origin countries; 2) the policies for selecting migrants including the required skill level of eligible migrants and migrants' sector of employment in the destination country; 3) the rights granted to migrants after admission including the duration of, and conditions attached to, the work permits issued; and 4) the primary policy objectives of the programme.⁵²

Hugo provides a typology of temporary labour migration programmes in the Asia-Pacific region, including low-skilled contract labour temporary migration, high skilled temporary labour migration, low-skilled seasonal labour migration, working holidaymaker schemes,

⁴⁹ On 11 April 2011, the European Council adopted an extension of the EU rules on long term residents amending Directive 2003/109/EC as a consequence of which refugees and beneficiaries of subsidiary protection will be able to acquire long-term resident status on a similar basis as other third-country nationals legally living in the EU for more than five years. Luxembourg, just as other Member States who take part in the application, will have to comply with the new rules within two years.

⁵⁰ Cassarino (2008: 4).

⁵¹ Global Forum for Migration and Development (2007a: 5).

⁵² Cf. Ruhs (2005: 3pp.).

student migration trainee migration, border commuters, and project tied labour migration.⁵³ He compares migrants' status in the destination country, their potential to move to permanent residency, their ability to bring family, and the overall amount of their rights in the host country. Abella lists frontier workers, seasonal workers, contract workers, guest workers, professionals and technical workers, intra-company transferees, working holidaymakers, occupational trainees, young professionals covered by agreements on exchange of trainees, entertainers/sports people, service providers/sellers, self-employed, students, and au pairs as categories that have been used in many temporary migration programmes.⁵⁴

Their overview shows that high-income receiving countries often operate different programmes for skilled and low-skilled migrants. Avoiding the permanent migration of low-skilled workers and their dependents is a clear policy priority for many governments of destination countries. Their interest is therefore focused on temporary migration programmes for low-qualified workers.⁵⁵ In contrast, policymakers in receiving countries often encourage the settlement of highly-skilled individuals, e.g. by transforming foreign student and temporary migration programmes for highly skilled or well-financed individuals into transitional programmes that can lead to permanent residency. Origin countries, on the other hand, rather try to promote circularity of their highly-qualified nationals, e.g. by supporting circular migration schemes, in order to restrict brain drain and its negative impacts.⁵⁶

Policy objectives of circular and temporary labour migration schemes may vary and range from addressing the labour market needs in the host country, the reduction of irregular immigration, the promotion of development in the origin country, the strengthening of special post-colonial or political relationships and of cultural ties; as well as the training of migrants. Apparent objectives of labour migration programmes, however, do not always correspond with the actual policy objectives in practice. For example, some countries have effectively used the working holidaymaker schemes and trainee schemes for the primary purpose of filling labour shortages.⁵⁷ This also applies to au pair schemes which are considered as

⁵³ Hugo (2009: 27).

⁵⁴ Abella (2006: 5).

⁵⁵ Newland *et al.* (2008: 3).

⁵⁶ Newland *et al.* (2008: 14).

⁵⁷ Ruhs (2005: 5).

cultural exchange programmes but do first and foremost provide cheap and flexible childcare to host families.⁵⁸

While the shared objective of both temporary and circular labour migration schemes is temporariness, there are a number of important differences between them. They are outlined in Table 1.

Table 1. Commonalities and differences between circular and temporary labour migration programmes

COMMONALITIES	DIFFERENCES
Temporariness: both involve temporary stays with no pathway to permanency	Circular migration programmes allow for frequent temporary stays abroad whereas temporary migration programmes are based on a one-time-only temporary stay and return which usually closes the migration cycle – single migratory cycle
Both can be components of broader patterns of loose or formal bilateral cooperation	Repetition of movements possible in spontaneous circular migration and regulated circular migration programmes
Often involve countries that are characterized by large differentials in terms of economic and social development	Circular migration programmes are more resource-intensive in terms of financial and logistical resources required for implementation than temporary migration schemes
Return may be both voluntary and force	Circular migration programmes usually involve the same groups of persons (migrants who are invited back) while temporary migration programmes often involve different groups
Similar benefits claimed: remittances, bringing back skills and mitigating brain drain	Circular migration schemes are based on sophisticated mechanisms aimed at selectively organizing the mobility of foreign workers
	One pillar of circular migration programmes is the outward circular migration to home countries for varying durations by diaspora settled in destination countries
	Involves diaspora contributions more specifically

Source: Wickramasekara (2011: 11/12) based on Cassarino (2008) with some additions by Wickramasekara

⁵⁸ See Section 2.2.1.1 for a more detailed discussion.

1.2.4 Concept of Circular Migration of the European Commission

Following the European Council Summit on 14/15 December 2006 in Brussels, the European Council invited the European Commission to propose ways on a) how to incorporate legal migration opportunities into the EU's external policies in order to develop a balanced partnership with third countries adapted to specific EU Member States' labour market needs; b) to suggest ways and means to facilitate circular and temporary migration; and c) to present detailed proposals on how to better organize and inform about the various forms of legal movement between the EU and third countries.⁵⁹ The Communication COM(2007) 248 final on circular migration and mobility partnerships between the European Union and third countries that was adopted on 16 May 2007 constituted the European Commission's response to this invitation. It seeks to identify 'novel approaches to improve the management of legal movements of people between the EU and third countries ready to make significant efforts to fight illegal migration' through so-called mobility partnerships. In addition, it looks at ways to facilitate circular migration, which will 'help EU Member States address their labour needs while exploiting potential positive impacts of migration on development and responding to the needs of countries of origin in terms of skill transfers and of mitigating the impact of brain drain'.

In Communication COM(2008) 359 final of 17 June 2008 on a common immigration policy for Europe, the European Commission again stressed the need to effectively manage migration flows through cooperation with third countries, including, amongst others, possibilities for legal circular migration. The European Parliament, in its resolution of 22 April 2009 on a Common Immigration Policy for Europe: Principles, actions and tools, pointed at options to mitigate the brain drain phenomena through temporary or circular migration in conjunction with other development-oriented measures, while reiterating the need to increase the attractiveness of the EU for highly qualified workers. It called on the European Commission and Member States to develop mechanisms, guidelines and other tools to facilitate circular and temporary migration.

⁵⁹ Revised Version of the Presidency Conclusions of the Brussels European Council (14/15 December 2006), 16879/1/06 REV 1, 12 February 2007, p. 9.

Also, the European Pact on Immigration and Asylum of 15 October 2008 refers to circular and temporary migration in several of its commitments, including ‘encourag[ing] Member States, as far as they are able, to offer the nationals of partner countries to the East and South of Europe opportunities for legal immigration adapted to the labour market situation in Member States, enabling those nationals to acquire training or professional experience and accumulate savings that they can use for the benefit of their home countries. The European Council invites Member States to encourage in this context forms of temporary or circular migration, in order to prevent a brain drain’ (commitment V(b)).

Justice and Home Affairs Council Conclusions of 30 November/1 December 2009 state that the Commission and the Member States commit themselves, for the sake of policy coherence for development in the area of migration, ‘to further examine issues which may have the potential to facilitate circular migration and voluntary return’. Council Conclusions also call for an ‘in-depth qualitative and quantitative analysis in order to further explore the concepts of temporary and circular migration, including their development potential, as well as to explore how they can contribute to and be affected by relevant policy areas’.

The Stockholm Programme, adopted by the European Council on 2 December 2009 and defining the priorities of the European Union on asylum and other Justice and Home Affairs issues from 2010 to 2014, called for ‘ways to further explore the concept of circular migration’. It invites the European Commission to submit a proposal before 2012 on ‘ways to facilitate orderly circulation of migrants, either taking place within, or outside, the framework of specific projects or programmes including a wide-ranging study on how relevant policy areas may contribute to and affect the preconditions for increased temporary and circular mobility’.

Circular migration

In Communication (2007) 248 final of 16 May 2005, the European Commission put forward their concept of circular migration. Accordingly, circular migration is foreseen as ‘a form of migration that is managed in a way allowing *some* degree of legal mobility back and forth

between two countries’⁶⁰. It is argued that, ‘if properly tackled, it could contribute to meeting the labour needs of the EU and help countries of origin optimize the benefits and limit the negative impacts of emigration, while removing or mitigating many of the incentives for illegal migration’⁶¹. Emphasis is thus put onto managed and legal mobility.

The European Commission outlines two forms of circular migration that they consider relevant in the EU context. On the one hand, there is circular migration of third-country nationals who are already settled in the EU and would thus provide them with the opportunity to engage in an activity (professional, business related or other) in their country of origin while retaining their residence in one of the Member States, i.e. without losing legal status. On the other hand, they propose the managed circular migration of third-country nationals still residing in a non-EU country, which would give them the opportunity to come to the EU to work, study, receive training etc. on a temporary basis. The underlying condition is that those migrants return and re-establish their residence and main activity in their country of origin at the end of the period for which they were granted entry and stay in the EU. Circularity could be enhanced by allowing those persons to retain a sort of privileged mobility to and from the Member State they were temporarily residing, e.g. simplified admission procedure.⁶² This concept has been criticised in the literature for its open ambiguity⁶³ and for the fact that the type of circular migration that the EU wishes to facilitate for incoming third-country nationals is essentially temporary migration.⁶⁴

Mobility partnerships

In the same Communication, the European Commission proposed so-called Mobility Partnerships.⁶⁵ They are different from managed circular migration in that they are an integral component of the Global Approach to Migration and as such part of the externalization of EU policy towards third countries.⁶⁶ The Global Approach to Migration brings together migration,

⁶⁰ COM(2007) 248 final, p. 8., the italics are the authors’.

⁶¹ COM(2007) 248 final, p. 13.

⁶² COM(2007) 248 final, p. 9.

⁶³ Kathmann (2011: 6).

⁶⁴ ‘if not properly designed and managed, migration intended to be circular can easily become permanent and, thus, defeat its objective’, COM(2007) final, p.8 (Wiesbrock and Schneider (2009: 3).

⁶⁵ COM(2007) 248 final, pp. 2-8.

⁶⁶ Carrera and Sagrera (2009).

external relations and development policy to address migration in an integrated, comprehensive and balanced way in partnership with third countries. This approach comprises the whole migration agenda, including legal and illegal migration, combating trafficking in human beings and smuggling of migrants, strengthening protection for refugees, enhancing migrant rights and harnessing the positive links that exist between migration and development.⁶⁷ Mobility Partnerships thus broader than the model of circular migration proposed in the same Communication. They would provide the overall framework for managing legal movement between the respective the European Community and interested third countries. Before a mobility partnership can be agreed on (negotiated by the European Commission and in association with interested Member States), third countries need to have committed themselves to cooperating actively with the EU on the management of migration flows, including cooperation with regard to fighting against illegal migration, and to put effective mechanisms for the readmission and reintegration of returnees in place. In this respect, it has also been pointed out that a return-friendly institutional environment in both countries of origin and country of destination, making a return-development link, is essential in order to optimize the reintegration process of migrants.⁶⁸

Mobility partnerships are to be tailored to the specific of each relevant third country, to the ambitions of the country concerned and of the EU, and the level of commitment the third country is ready to take on.⁶⁹ In addition to necessary commitments by the third country (i.e., to discourage illegal immigration, support reintegration, improve economic and social framework conditions in third country), the European Commission and the participating Member State engage themselves to implement measures improving opportunities for legal migration of third-country nationals. These could focus on economic migration only such as access to national labour market, based on labour market needs and respecting the principle of Community reference for EU citizens, introduction of labour quotas, or include other categories of migrants, such as students. They shall assist third countries to develop their capacity to manage legal migration flows and address the issue of brain drain through tailor-made programmes and measures.

⁶⁷ COM(2007)247 final, p. 17.

⁶⁸ Cassarino (2008: 10).

⁶⁹ European Commission (2007: 3).

1.2.5 Policy Debate

Triple-win discourse

Proponents⁷⁰ argue that temporary and particularly circular migration offers benefits for the country of destination, the country of origin as well as the migrants themselves, creating a so-called ‘win-win-win-situation’. For the destination countries, these programmes are seen as a tool for effective migration management and a way to facilitate the movement of persons. They may serve the labour market needs of the receiving countries leading to increased and accelerated economic growth. They are also seen as a way to mitigate undocumented migration by opening opportunities for legal migration, signing readmission agreements with the countries of origin and improving police and judicial cooperation. It has also been argued that many policymakers in receiving countries support circular and temporary migration programmes not only because they seem to offer a legal alternative to undocumented migration but also because permanent immigration is unwanted by the majority of the native population and policymakers do not want to lose popularity.

Furthermore, migrants have come to be perceived as development actors who can make a considerable contribution to the development of their home countries. Countries of origin have come to favour circular and temporary migration to ensure the flow of remittances, to promote investments and to increase the circulation of human capital and enable skill transfer. Giving quotas to sending countries for legal migration should motivate them to cooperate with receiving countries in fighting illegal migration where it originates.⁷¹ The benefits of circular and temporary migration programmes for migrants are seen in new options for legal migration, increased salary and savings, further qualifications and the reduction of negative social impacts of migration due to only temporary separation from their families.⁷²

Discussions and proposals of new and improved temporary migration programmes do not dispute the adverse consequences of such programmes in the past, which failed to meet their stated policy objectives and instead generated a number of unanticipated consequences

⁷⁰ E.g. Agunias and Newland (2007), European Commission (2007), Global Forum for Migration and Development (2007a, 2007b).

⁷¹ Heckmann *et al.* (2009: 8).

⁷² Bieckmann and Muskens (2007).

including non-return and eventual settlement of many temporary workers. Proponents of new temporary migration programmes argue that these negative experiences should not be allowed to conceal the potential of the process to deliver a triple win. The process in itself is not intrinsically bad but in many cases the way in which it has been operationalised has often left much to be desired. Innovative policy designs could help to avoid the past policy mistakes and generate significant benefits for all parties involved.⁷³

Criticism of circular migration as policy tool

The critical voices on the current promotion of circular migration as a policy tool are similar to the more general criticism by established migration scholars on the present optimistic policy discourse on migration and development which, in their opinion, disregard structural constraints to development.

Glick Schiller and Faist argue that

‘[t]here is no doubt that, in principle, migration can produce outcomes that are beneficial to receiving countries, which attract ‘global talent’ by competing for the ‘best and brightest’ and which are also dependent on unskilled labour from abroad. These outcomes can be likewise beneficial to sending countries and the migrating populations, with their different class backgrounds and interests. Yet the conditions for realizing these benefits are complex because they are linked to transformations in the fundamental balance of power between regions and states and within states. Consequently, we view strategies that tout remittance-led development as being at best naïve. This is so because migration alone cannot remove structural constraints to economic growth and greater democracy [...]. [We] emphasize the need for a many-pronged development strategy, in which the potential benefits to migration are small parts to larger plans to reduce inequalities and to improve economic infrastructure, social welfare and political governance.’⁷⁴

In a similar vein, de Haas puts forward that

⁷³ Cf. Ruhs (2005: 1), Hugo (2009: 40).

⁷⁴ Glick Schiller and Faist (2010: 18-19).

‘[p]ublic policies which improve the functioning of social, legal, economic and political institutions, the access of ordinary people to basic amenities and markets and which restore trust in governments, are crucial not only for creating a fertile ground for development in general, but also for compelling more migrants to invest and/or return in origin countries. Policy and scholarly discourses celebrating migration, remittances and transnational engagement as self-help development ‘from below’, shift the attention away from structural constraints and the real but limited ability of individuals to overcome these. This exemplifies the crucial role *states* continue to play in shaping favorable general conditions for human development to occur.’⁷⁵

The general tenor of critics of temporary and circular (labour) migration schemes is that a triple win is hard to achieve, the claimed benefits are highly exaggerated and negative aspects are neglected in the present policy discourse. It is argued that even when a common European system of managed migration is in place, special efforts will be needed to ensure the ‘win’ for developing countries. Because in practice it is likely that rather than win–win, the result will be zero–sum, in which the needs of the much more powerful European countries will prevail.⁷⁶ It is not only the unequal bargaining power between origin and destination country but also the strong differentials in terms of living conditions, wages, economic development, education, the rule of law etc. characterising the countries involved in such schemes that are considered problematic. The resilience of those differentials makes the temporariness of labour migration an extremely tricky issue, not only because migrants may be tempted to seek permanent settlement abroad, but also because migrants’ countries of origin and destination may not share the same vision and interests in managing temporary and circular migration.⁷⁷

In addition, strong concerns have been raised that the policy preference of destination countries for temporary and circular migration is mainly motivated by prospects for increased migration control and the fight against undocumented migration, while the objective of economic development is subordinate.⁷⁸ Critics also challenge some of the underlying

⁷⁵ De Haas (2010: 258).

⁷⁶ Bieckmann and Muskens (2007).

⁷⁷ Cassarino (2008: 5p.)

⁷⁸ E.g., Angenendt (2007).

assumptions of the triple-win argument. They point to the lack of empirical evidence on the question whether irregular immigration can actually be reduced through the promotion of temporary migration as new pathways to legal migration.⁷⁹ Such a perspective presupposes that legal and irregular migration is intrinsically connected. In reality, however, such a view is too simple as different forms of migration affect each other only to a certain degree.⁸⁰

While there is not much information on the employers' perspective⁸¹, previous experiences with temporary labour migration programmes have shown their limited enthusiasm for frequent rotations if temporary workers are working in permanent jobs. Because of shorter stays, incentives to invest in human capital are low, both for employers and migrants themselves. For this reason, some even argue that managed temporary and circular migration 'should definitely not be used for qualified workers'⁸². The period of permissible employment, the required breaks between repeated recruitments abroad and the often high transaction costs⁸³ involved in short-term overseas employment do not only provide limited possibilities for temporary migrants to accumulate human but also financial capital, probably the main motivation of migrants to participate in temporary or circular labour migration schemes.⁸⁴ If the work permit allows less time for employment than migrants need to cover the migration costs or other commitments back home, they may overstay and resort to illegal work.⁸⁵ The likely focus on low-skilled workers in respective schemes, in addition to the short period of stay, promises only a low transfer of skills and knowledge from the host country to the country of origin, particularly in the case of seasonal employment in agriculture. This and the expected small number of participating migrants are likely to render only very limited development effects for the countries of origin.

Voluntary return of temporary labour migrants to their countries of origin after their work contracts expires is a further concern commonly found in the literature. On the one hand, many find it unrealistic to expect that temporary labour migrants will return home even if the

⁷⁹ Angenendt (2007: 3).

⁸⁰ Kathmann (2011: 1).

⁸¹ Wickramasekara (2011: 26pp.).

⁸² Heckmann *et al.* (2009: 10).

⁸³ Hugo (2009: 30).

⁸⁴ Newland *et al.* (2008: 10).

⁸⁵ Global Forum for Migration and Development (2007a: 8).

programmes are well designed and implemented.⁸⁶ In a quantitative analysis on the factors associated with temporary migrants' decision to become or not become permanent residents and the reasons for their decision, using survey data on skilled temporary migrants in Australia⁸⁷, Khoo *et al.* found strong empirical evidence that it is the conditions in the countries of origin and destination, rather than the conditions of the temporary migrant worker programme, that are important in encouraging temporary migrants to return home. Migrants are more likely to want to return home if they have good employment opportunities in their home country to return to or if they dislike the social and economic conditions in the destination country. These conditions are unlikely to hold in the case of temporary labour immigration from less developed countries to more developed countries, because it is usually the lack of good employment opportunities in the country of origin and better social economic conditions in the destination countries that have led to the initial migration.⁸⁸ While some destination countries can impose strict conditions to ensure that foreign workers return home at the end of their work contract, other countries that are liberal democracies may find it difficult to balance such restrictions with human rights concerns.⁸⁹ On the other hand, Cassarino emphasizes that migrants' patterns of reintegration into their countries of origin and their propensity to contribute to development are shaped by the place/context of reintegration, duration and type of migration experience abroad, pre- and post-return conditions which motivated the return. He therefore calls for a revisited approach to return and reintegration given the dominant security-oriented approach according to which return is viewed as the end of the migration cycle.⁹⁰

Further points of criticism raised in the literature include, amongst others, that managed programmes require significant government involvement and interventions in the labour market as well as close cooperation between sending and destination countries.⁹¹ Cooperation with origin countries might be difficult if they are authoritarian states or the agreement has been signed under political pressure (e.g. readmission agreements) and for economic reasons

⁸⁶ Angenendt (2007: 2).

⁸⁷ In Australia, large-scale, explicitly skill-selective settlement migration policies and programmes have been implemented for more than thirty years. The current Australian immigration programme is highly planned with the government setting a target for each year. The empirical study examined 1 163 holders of the renewable employer-sponsored temporary business entry visa which allows employers to sponsor skilled workers from overseas for a stay of up to four years. Visa holders can immediately bring their families with them and are able to apply for permanent residence if they wish (Khoo *et al.* (2008).

⁸⁸ Khoo *et al.* (2008: 223).

⁸⁹ Khoo *et al.* (2008: 194). See also Agunias and Newland (2007: 10).

⁹⁰ Cassarino (2008: 10).

⁹¹ Bieckmann and Muskens (2007).

but is against the interests of its own people. In addition, critics are worried that temporary labour migration programmes will create a vulnerable class of workers with limited (or at least temporary) rights.⁹² One of the primary sources of migrants' vulnerability while employed under temporary migration programmes is the requirement that they work for the employer specified on the work permit only. Tied in this way to their employers, migrants may find it difficult or impossible to escape unsatisfactory working conditions unless they are willing and financially able to return home. The problem may be exacerbated by some employers' illegal practices of retaining migrant workers' passports and by the provision of 'tied accommodation', i.e. accommodation provided by the employer to their migrant workers on the condition that and as long as the migrant keeps working for that employer.⁹³ Others point to the disparity between celebrating (settled) migrants as actors for development of their countries of origin on the one hand and anti-migration discourses in countries of destination on the other hand which portray migrants' transnational ties as threats to 'national security' or lack of loyalty to the country of destination.⁹⁴ Similarly, the concept of circular migration which cherishes multiple belongings and encourages a continuing attachment of third-country nationals to their country of origin contradicts the assimilationist tendencies of national integration policies.⁹⁵ In the case of incoming temporary migrants, it remains open to what extent they are expected and given the opportunity to become integrated into the host society.

⁹² Bieckmann and Muskens (2007).

⁹³ Ruhs (2005: 14).

⁹⁴ Glick Schiller (2009: 23).

⁹⁵ Wiesbrock and Schneider (2009: 2).

2. NATIONAL APPROACH TO TEMPORARY AND CIRCULAR MIGRATION

2.1 National Vision and Policy

Migration and mobility in Luxembourg – Past and Present

Immigration can be considered a structural phenomenon in the history of the region now known as the Grand Duchy of Luxembourg.⁹⁶ Previously a country of emigration, Luxembourg experienced large-scale labour immigration of both low and highly skilled workers with the onset of the Industrial Revolution in the second half of the 19th century and the development of the steel industry. It coincided with the country's accession to the German Customs Union in 1842, the installation of the railway in 1859 and the political consolidation and demilitarization following the Treaty of London signed in 1867, all of which facilitated cross-border trade and the transport of goods and people. Given the lack of a sufficient number of qualified and/or willing workers who could be recruited among the local population, qualified workers, engineers and supervisors arrived, mainly from the neighbouring regions of Germany. They brought their families and eventually settled permanently. At the same time, manual workers came from Italy to work in the country's mines and factories. Contrary to their German counterparts, they were less qualified and overwhelmingly single men or they were not accompanied by their families. Their migration pattern was characterized by a frequent rotation between the neighbouring regions of Lorraine, Luxembourg and Saarland in search for the best working conditions and highest salaries. It involved a short stay of several months in Luxembourg before migrating elsewhere in the region and sometimes returning to Luxembourg at a later point in time.

After the Second World War, German immigration stopped for obvious reasons but additional workers were needed in the construction and agricultural sectors for the reconstruction of the country.⁹⁷ The Government of Luxembourg had already called on Italians in 1945 to come to Luxembourg but the Italian Government refused to comply with that request for political reasons. In 1948, after all, a bilateral agreement was concluded between Italy and Luxembourg which had been regularly extended until the creation of the European Economic

⁹⁶ The subsequent outline is based on Pauly (2010).

⁹⁷ After the Second World War, the better paid jobs in the steel industry were mainly reserved for nationals.

Community (EEC) in 1957. The agreement involved an annual quota, the recruitment of workers in Italy, and fixed-term but renewable work contracts. In the course of the 1950s, however, immigration from Italy declined as workers preferred to go to Germany or Switzerland where higher wages were paid or they decided to look for work in the economically strong Northern part of Italy. To give further incentives, Luxembourg accorded more open conditions in 1957 such as the possibility of family reunification, higher annual quotas and subsidies for companies to provide appropriate accommodation. Yet, these measures did hardly have any effect and became superfluous with the coming into force of the Treaty of Rome on 1 January 1958 which allowed the free circulation of workers between the Member States of the EEC.

Luxembourg had also entered into bilateral labour agreements with other States and in doing so, deliberately encouraged a 'White and Catholic immigration'⁹⁸. In 1950, a bilateral agreement was signed with the Netherlands to recruit agricultural workers. According to the conditions of the agreement, workers had to be unmarried and Catholic men from the Dutch provinces of North Brabant and Limburg bordering Belgium. Since the Mid-1960s, Portuguese migrants who had been working in the French neighbouring province of Lorraine came to Luxembourg, and, in 1970, a bilateral agreement was signed between Portugal and Luxembourg. Family reunification was allowed immediately. The agreement became redundant when Portugal nationals, after the country had joined the EEC in 1986, enjoyed freedom of movement within the territory of the Member States as from 1 January 1993. The majority of Portuguese immigrants was low-qualified and worked primarily in the construction and cleaning sector or as domestic workers. Cape Verdean migrants, however, who through the colonial ties between the two countries came to work in Portugal where they mainly replaced the unskilled Portuguese labourers that had migrated to other European countries and then often moved onwards from Portugal⁹⁹ or went directly to Luxembourg¹⁰⁰, were not welcomed.

Also in 1970, a bilateral agreement had been signed with the Former Republic of Yugoslavia. However, given the fact that Muslim immigrants were not wanted, family reunification was

⁹⁸ Pauly (2010: 68).

⁹⁹ Carling (2002).

¹⁰⁰ Centre de Documentation et d'Animation Interculturelle (2010: 13).

not allowed. For the same reason, bilateral labour agreements were not envisaged with Asian or North African countries. As a result of further immigration, family reunification and chain migration, Portuguese nationals constitute nowadays the largest group of non-nationals in Luxembourg (81 274 or 15.9% of the total 511 840 inhabitants in Luxembourg on 1 January 2011¹⁰¹, see also Table 2). Nationals from the Former Republic of Yugoslavia, including those who came to Luxembourg during the Yugoslav wars in the 1990s and the conflicts in Kosovo, represent the largest group of third-country nationals.¹⁰² They form part of the 43.2 percent non-nationals among the resident population in Luxembourg (or 221 364 on 1 January 2011) and this high number of non-nationals can be largely explained by the massive recourse to foreign workforce.¹⁰³ Contrary to most of the other EU Member States, the overwhelming majority of resident non-nationals are of EU origin. Only 14.1 percent of the total number of non-nationals living in Luxembourg originates from a country outside the EU.¹⁰⁴

¹⁰¹ These figures, however, do not provide information about the total number of persons with immigration background, particularly those who naturalized, and those with double citizenship who are counted as nationals in the statistics.

http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=384&IF_Language=fra&MainTheme=2&FldrName=1&RFPath=68

¹⁰² National Contact Luxembourg within the European Migration Network (2011: 41/Table 6).

¹⁰³ Thelen (2010: 225).

¹⁰⁴

http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=384&IF_Language=fra&MainTheme=2 &FldrName=1&RFPath=68

Table 2. Usually Resident Population in Luxembourg, 2009-2011

Population	1 January 2009		1 January 2010		1 January 2011	
	Total	Percent	Total	Percent	Total	Percent
TOTAL	493 500	100.0	502 066	100.0	511 840	100.0
Nationals	277 991	56.3	285 721	56.9	290 476	56.8
Non-nationals	215 509	43.7	216 345	43.1	221 364	43.2
.... EU-27 citizens	185 354	37.6	186 244	37.1	190 264	37.2
.... Portuguese	79 974	16.2	79 769	15.9	81 274	15.9
.... French	28 536	5.8	29 695	5.9	31 055	6.1
.... Italian	19 353	3.9	18 166	3.6	17 700	3.4
.... Belgian	16 738	3.4	16 759	3.3	16 996	3.3
.... German	12 023	2.4	12 059	2.4	12 125	2.4
.... British	5 296	1.1	5 483	1.1	5 621	1.1
.... Spanish	3 320	0.7	3 286	0.7	3 433	0.7
.... Polish	2 248	0.5	2 488	0.5	2 705	0.5
.... Danish	2 192	0.4	2 186	0.4	2 178	0.4
.... Swedish	1 765	0.4	1 780	0.3	1 768	0.3
.... Other	13 909	2.8	14 573	2.9	15 409	3.0
Non-EU-27 citizens	30 155	6.1	30 101	6.0	31 100	6.1

Source: STATEC © LU EMN NCP

The steel crisis in the early 1970s resulted in the loss of a significant number of jobs in the industrial sector. As a consequence, Luxembourg moved to post-industrial economy based on the provision of information, finance, and services. The country opened its economy to the global trade in goods and services and to foreign production factors both in terms of workforce and capital and in doing so the authorities adopted a flexible and pragmatic approach. Advantageous political decisions have accelerated the accumulation and consolidation of a strong economy and they have largely influenced the migration

movements.¹⁰⁵ Luxembourg experienced immigration of highly qualified executive staff and managers in the financial sector as well as of EU officials arriving with the basing of some of the European institutions in country. Had the immigration from Portugal so far mainly consisted of low-skilled workers, Luxembourg increasingly attracted skilled and highly qualified migrants after Portugal joined the EEC. As such, the ‘double immigration’¹⁰⁶ that Luxembourg experienced at the end of the 19th century recurred again.

As from the early 1990s, qualified and highly-qualified cross-border workers (*frontaliers*) were employed in order to satisfy the country’s structural labour demand and counterbalance the declining immigration.¹⁰⁷ Cross-border employment has become an important labour mobility pattern in the Greater Region of Luxembourg and plays a significant role for the country’s economy.¹⁰⁸ According to the data provided by the General Inspectorate of Social Security, Luxembourg counted 11 400 cross-border workers at the end of 1975. Ten years later, they totaled 16 100 and, in 1995, their number was at 55 500. In just three decades, their number has increased more than tenfold to 118 300 in 2005. In 2010, their number reached 149 900. Almost half of the cross-border workers (74 100 individuals) came from France, 25.4 percent (38 000 individuals) resided in Belgium and 25.2 percent (37 800 individuals) in Germany.

Their arrival is not the result of a specific government policy but based on the free movement of workers guaranteed to EU nationals by the Treaty of Rome and regulated by the Council Regulation No 1612/68/EEC, the economic needs of the country and the lack of qualified workers in the national population. It is also motivated by the elevated unemployment in the neighbouring regions, a considerable job creation capacity in Luxembourg, cross-national salary differences as well as considerable differences in housing and living costs, and not at least the country’s multilingual character facilitating the communication of in one of the official languages (French or German).

¹⁰⁵ Thelen (2010: 229).

¹⁰⁶ Pauly (2010: 69).

¹⁰⁷ The term cross-border worker refers to any person who is employed in an EU Member State but resides in another, where he or she returns at least once a week (Source: http://www.eurofound.europa.eu/areas/industrial_relations/dictionary/definitions/frontierworkers.htm). A distinction can be made between “true” cross-border workers who originate from the Greater Region and “bogus” cross-border workers who chose to settle in the neighbouring regions upon their first employment in Luxembourg or even before.

¹⁰⁸ Thelen (2010).

Correspondingly, the share of cross-border workers in the total employed labour force of the internal labour market went from 19.7 percent (33 000 individuals) in 1990 to 45.2 percent (148 500 individuals) in 2010 (31 March of reference year, rounded figures). In the same period, the proportion of national resident workers in the total employed workforce dropped from 53.8 percent (90 400 individuals) in 1990 to 30.4 percent (100 100 individuals) in 2010. Despite a numerical increase, the proportion of EU and third-country national workers residing in Luxembourg remained more or less stable (see Table 2).

Table 3. Development of salaried cross-border workers by country of origin, 1975-2010
(31 December of reference year, rounded figures)

Year	Total	Belgium	France	Germany
1975	11 400	5 700	4 400	1 300
1980	13 400	5 700	4 700	1 500
1985	16 100	7 200	7 000	2 700
1990	33 700	12 300	16 600	6 400
1995	55 500	17 200	29 500	10 200
2000	87 400	24 300	46 500	16 500
2005	118 300	31 600	60 600	26 100
2006	126 200	33 200	64 100	28 900
2007	136 200	35 300	68 700	32 200
2008	146 000	37 500	72 900	35 700
2009	147 400	37 600	72 800	37 000
2010	149 900	38 000	74 100	37 800

Source: General Inspectorate of Social Security/STATEC

Table 4. Composition of the employed internal workforce by citizenship and country of residence, 1990-2010 (31 March of reference year, rounded figures)

Specification	1990	1995	2000	2005	2006	2007	2008	2009	2010
National resident	90 400	87 000	90 600	94 000	94 900	95 100	96 400	97 700	100 100
Non-national resident: EU	40 900	49 200	60 000	69 800	72 500	75 000	79 200	81 300	81 300
Non-national resident: non-EU	3 600	5 300	6 900	8 100	8 500	8 900	9 500	9 700	9 600
Cross-border worker	33 000	54 100	84 400	116 400	123 600	132 700	143 700	147 400	148 500
TOTAL	167 900	195 600	241 900	288 300	299 500	311 700	328 800	336 100	339 500

Source: General Inspectorate of Social Security © LU EMN NCP

The interviews conducted in the context of the EMN Study on ‘Satisfying Labour Demand through Migration’ showed that most of the stakeholders in Luxembourg consider cross-border workers as a continuing source of labour. Only one interviewee, from the employers’ perspective, raised concerns as to how long Luxembourg will continue to be able to attract such significant numbers of cross-border commuters considering the ageing of the population in the neighbouring countries, the economic revival of the neighbouring regions, and the time and costs associated with commuting.¹⁰⁹ At present, there is not a clear policy to address these kinds of issues.¹¹⁰ With a relatively stable indigenous employment and presumed sustained immigration, Luxembourg would need 500 000 cross-border workers in 2050. It remains to be seen whether those workers will be available, whether the conditions in Luxembourg will be conducive and the public opinion favourable to such a development.¹¹¹

Finally, it is important to note that the structural labour demand in Luxembourg has virtually never represented a competition for Luxembourg nationals given the strong segmentation of the economy according to the sectors of economic activity.¹¹² While cross-border workers and resident non-nationals work in both highly-paid and low-paid jobs in the private sector, Luxembourg nationals are lacking almost completely in certain branches of the economy such as construction, hotel and catering industry, and real estate industry. Given their nationality and competency in all three official languages, they are over-proportionally employed in the ‘protected’ public sector (see Graph 1).¹¹³

¹⁰⁹ Interview 7 (EMN Study ‘Satisfying Labour Demand through Migration’), 9 July 2010, with a representative of an employers’ organization, page 2, lines 9-25. See also Thelen (2010: 233+236).

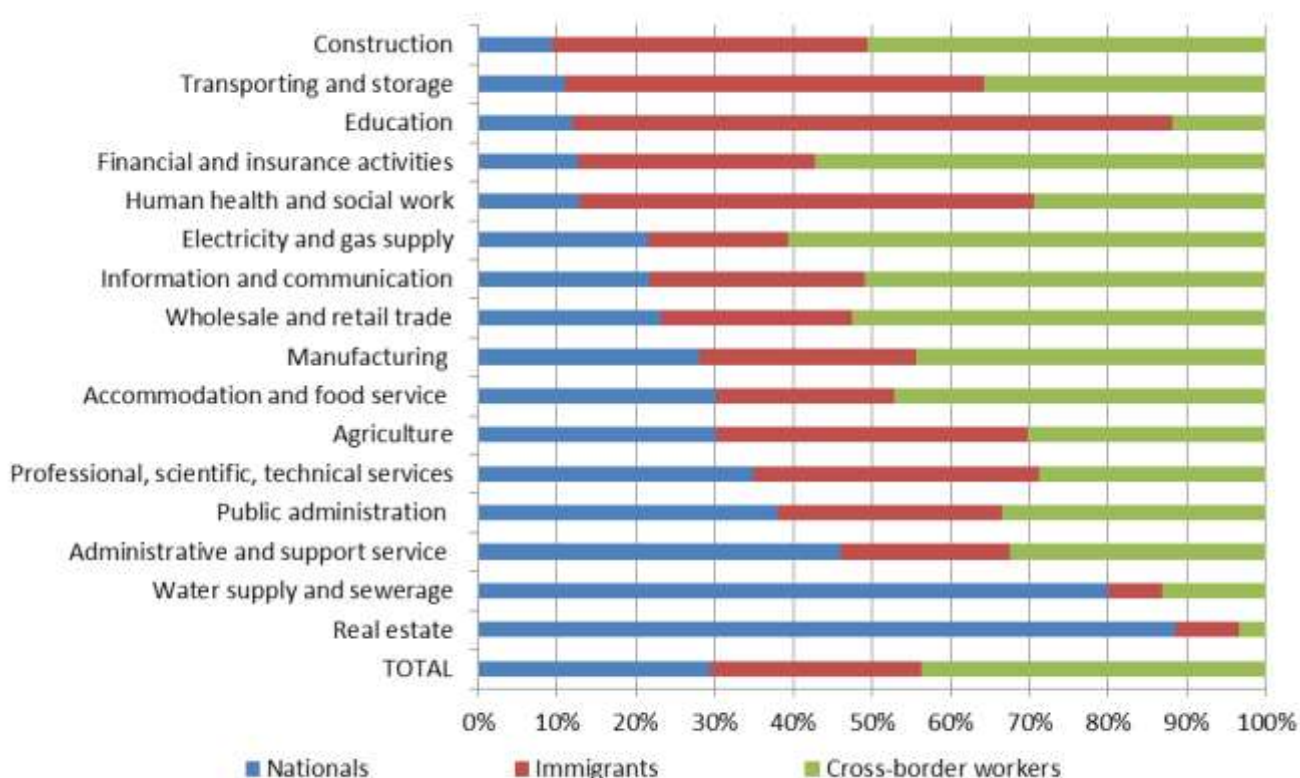
¹¹⁰ National Contact Point Luxembourg within the European Migration Network (2011b).

¹¹¹ Thelen (2010: 236).

¹¹² Thelen (2010: 227).

¹¹³ Pigeron-Piroth (2009), Thelen (2010).

Graph 1. Proportion of salaried national, immigrant and cross-border workers across sectors of activity according to NACE codes (31 March 2010)



Source: IGSS © University of Luxembourg

National vision on circular and temporary migration

The historical overview has shown that migration and mobility have always played an important role throughout the country's history. Before the new legislation on immigration and integration came into force in 2008¹¹⁴, migration was mostly governed by administrative practice.¹¹⁵ Previous bilateral labour agreements and the recurrence to cross-border workers from the Greater Region are examples of the ad hoc efforts of the Government of Luxembourg to satisfy the national labour demand by turning to non-national workers.

Despite the recent interest in circular and temporary migration at the EU and global level, a policy and public debate in Luxembourg on these forms of migration is quasi non-existent.

¹¹⁴ Law of 29 August 2008 on the Free Movement of Persons and Immigration and Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand-Duchy of Luxembourg.

¹¹⁵ Pauly (2010).

While the programmes of the Luxembourgish Government for the legislative periods 2004-2009¹¹⁶ and 2009-2014¹¹⁷ both emphasize that legal immigration is considered a positive contribution to the society and economy of Luxembourg and, in the 2009 government programme, that immigration shall be adapted to the needs of the Luxembourg economy while at the same time respecting European and international commitments, temporary and circular migration were not explicitly mentioned in either document. Emphasis was rather placed on the intensification of efforts to reduce irregular immigration, including through bilateral and multilateral cooperation. It was also stated that the organization of legal migration goes hand in hand with the ‘fight against irregular immigration and irregular employment’.¹¹⁸ Similarly, Prime Minister Jean-Claude Juncker does not make explicit reference to the topic of immigration in general or circular migration in particular in his annual government declaration¹¹⁹ on 29 July 2009. He does, however, affirm the fundamental importance of foreign and EU policy in the upcoming legislative period.

Circular migration was only addressed marginally during the drafting of the Law of 29 August 2008 on the Free Movement of Persons and Immigration. The Economic and Social Council, which had been assigned by the Prime Minister to prepare an opinion on the essential aspects of the reform of the immigration legislation and the definition of an immigration policy and active integration policy, referred, in its report of October 2006, to the circulation of migrants only when summarizing the action plan adopted at the Euro-African conference on migration and development in July 2006.¹²⁰ Temporary migration was only mentioned as one reason for the alleged integration difficulties of Portuguese immigrants. Thus, a certain number of them had intended to stay only temporarily in Luxembourg and organized their life accordingly. In the course of the years, however, their life planning changed, particularly if they had children who attended school in Luxembourg, and they were now faced with the challenge to make up for their limited integration.¹²¹ In the minutes of the parliamentary session debating the bill of the Law on the Free Movement of Persons and

¹¹⁶ Government of the Grand Duchy of Luxembourg (2004: 9).

¹¹⁷ Government of the Grand Duchy of Luxembourg (2009: 21-22).

¹¹⁸ Government of the Grand Duchy of Luxembourg (2009: 21-22).

¹¹⁹ Juncker (2009).

¹²⁰ Economic and Social Council (2006: 30).

¹²¹ Economic and Social Council (2006: 31p.).

Immigration¹²², circular migration was mentioned four times¹²³, mainly in conjunction with the legal provision that allows third-country national graduate students to obtain authorization to stay and work in Luxembourg for two years before returning to their country of origin (Article 59).

Luxembourg proposed to study the possibility of setting up an initiative on temporary circular migration with Cape Verde in the context of the Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde signed in May 2008.¹²⁴ However, as will be discussed in detail in Section 2.3, such a managed migration scheme has to date not been developed or implemented. Other than those presented, there is, to the authors' knowledge, no public policy document that addresses these forms of migration.

The subject of brain drain, one of the main pro arguments in the policy debate on circular and temporary labour migration programmes, does not seem to be much debated in Luxembourg.¹²⁵ When addressed with the topic in the course of the preparation of the National Report to the EMN Study 'Satisfying Labour Demand through Migration', representatives of the Government, employers' organizations and a trade union generally cited the small percentage of third-country national immigrants compared to the high number of EU citizens living and/or working in Luxembourg, the fact that vast majority of third-country nationals do not originate from highly and medium developed countries, and the very small size of country as reasons for the lack of the debate and the minimal role that Luxembourg could possibly play in the fight against brain drain. Most interviewees associated brain drain rather with Luxembourg nationals who go abroad for employment, study purposes or other reasons.¹²⁶

¹²² Chamber of Deputies of the Grand Duchy of Luxembourg (2008).

¹²³ Chamber of Deputies of the Grand Duchy of Luxembourg (2008: 652, 654, 663, and 664).

¹²⁴ 9460/08 ADD 2 of 21 May 2008.

¹²⁵ Semistructured interview 11 (EMN Study 'Satisfying Labour Demand through Migration'), 23 July 2010, with a representative of a public institution, page 6, lines 30-33.

¹²⁶ National Contact Point Luxembourg within the European Migration Network (2011b: 142).

Position of national stakeholders on circular migration

It is thus hardly surprising that national stakeholders who have been approached for the purpose of the present report were mostly unfamiliar with the concept of circular migration in general and the policy tool of circular migration as envisaged by the European Union in particular. For instance, the vast majority of representatives of migrant associations and non-governmental organizations who participated in the national workshop organized by the EMN National Contact Point Luxembourg on 23 September 2010 were not familiar with the EU concept of circular migration. Relevant programmes or initiatives, such as the mobility partnership between Luxembourg and Cape Verde, were not brought up by the participants.¹²⁷ Moreover, stakeholders who have been interviewed anonymously generally took a skeptical and/or negative stance on circular migration. Political actors and officials expressed their concerns about the implementation of circular migration programmes, such as the high degree of organizational effort required and the question of how to ensure return. Similar concerns had already been raised by the then Minister for Cooperation and Humanitarian Affairs, Jean-Louis Schiltz in a newspaper interview in late 2007 following the EU-Africa Summit:

‘Es gibt sicherlich einige positive Ansätze bei der “migration circulaire”, ich sehe aber nicht, wie man das Ganze in der Praxis umsetzen kann. Man hat es hier mit individuellen Schicksalen zu tun, und ich sehe im Moment nicht, wie man das organisatorisch zufriedenstellend regeln könnte.’¹²⁸

In addition, one interviewee expressed his doubts about the impact that circular migration could possibly have on the development of countries of origin given the small number of persons expected to participate in circular migration programmes.¹²⁹ Representatives of non-governmental organizations and migrant associations, on the other hand, were worried that circular migration programmes as envisaged by the EU might simply be a new type of the ‘old’ guestworker programmes by which governments try to ‘import labour’ for a fixed period

¹²⁷National Contact Point Luxembourg within the European Migration Network (2010).

¹²⁸Luxemburger Wort (18 December 2007). Free translation by the author: ‘Circular migration’ certainly includes a number of positive approaches, but I do not see how you can put it into practice. You always deal with individual cases and at the moment I do not see how you could manage and organize it in a satisfactory manner’.

¹²⁹Interview 3 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 10, lines 10-13.

of time. They were also concerned about potential human rights violations against participating migrants.¹³⁰

Public and political debate regarding migration and development

While circular and temporary migration are not addressed in the present public and policy debate on immigration and no bilateral labour migration schemes are currently put in place, the context in which these forms of migration do play some role in Luxembourg and where small-scale, isolated examples that involve the international exchange of a limited number of people can be identified is the realm of ‘migration and development’.

To begin with, the national discourse on the migration-development nexus is weak both in the public and political domain. In fact, the corresponding French term ‘*co-développement*’ itself has only been picked up recently from the initiatives of the European Union and France. While the idea is known to political actors and migrant associations in Luxembourg, it has only been recently discussed by migrants associations. There are neither official documents that mention the topic nor relevant press articles or specialized publications. The critical reflection on the concept on ‘*co-développement*’ is rare.¹³¹

One of the few exceptions was the two-year project *À Citoyenneté Égale*¹³² (2008-2010) and the corresponding (second) Forum *À Citoyenneté Égale* that took place in Luxembourg City on 6 November 2010. They brought together migrant associations from Luxembourg, Lorraine (France) and Rhineland-Palatinate (Germany) and provided a platform for the reflection on the concept of ‘citizenship’. One of the six working groups elaborated the position of migrant associations on the subject of ‘Migration and solidarity with the countries of origin’¹³³. Amongst others, they propose to recognize and appreciate the role of migrant associations as interface between two economic, social, political and cultural spaces and the particular role they could play as actors of development.¹³⁴ The working group considers the

¹³⁰ National Contact Point Luxembourg within the European Migration Network (2010); unstructured interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 December 2010, with an expert.

¹³¹ Besch *et al.* (2010: 54).

¹³² <http://www.clae.lu/html/m4sm4.html>

¹³³ Forum *À Citoyenneté Égale* (2010: 43-49).

¹³⁴ Forum *À Citoyenneté Égale* (2010: 45).

full civic participation of immigrants in the country of destination as the main prerequisite for the acquisition and eventual transfer of competences and experiences to their countries of origin. They therefore propose to improve the conditions of stay of immigrants in the host country so that they can benefit from the same political, economic, social and cultural rights like all citizens.¹³⁵ Furthermore, they recommend to encourage the mobility of all immigrants by granting them as quickly as possible a set of rights that allow them to consider forth-and-back movements between their country of origin and destination without jeopardizing the rights associated with their stay in either country.¹³⁶ In addition, they call on countries of destination to introduce the right to dual citizenship as this will allow persons with a migratory background to enjoy the full set of rights and duties that cannot be contested at one point or another. Return should no longer be used as an instrument for the regulation of immigration but as a possibility for migrants to stay in their country of origin (on a short-term or permanent basis) without affecting their residence rights in the European Union.¹³⁷ The working group also demands that migration management policies ought to be separated from development cooperation as it is not acceptable to them that governments instrumentalize the latter as a means to adjust migration flows.¹³⁸

Two political actors who have been interviewed for the preparation of the present report expressed a similar standpoint. They point out that the objectives of development policy are different from the objectives of immigration policy:

‘[D]ie Entwicklungspolitik hat sehr eigene Ziele. Und das Hauptziel ist die Armut zu bekämpfen. Das Hauptziel der Entwicklungspolitik ist nicht, uns Fachkräfte aus den Entwicklungsländern nach Luxemburg zu holen. Das ist nicht, nicht das Hauptziel. Das Hauptziel dient eigentlich der Verwirklichung eines Menschenrechts. [...] Die Entwicklungspolitik darf nicht durch andere, kann man sagen, utilitaristische Überlegungen verwässert werden.’¹³⁹

¹³⁵ Forum À Citoyenneté Égale (2010: 47).

¹³⁶ Forum À Citoyenneté Égale (2010: 43).

¹³⁷ Forum À Citoyenneté Égale (2010: 49).

¹³⁸ Forum À Citoyenneté Égale (2010: 44).

¹³⁹ Free translation by the author: ‘[D]evelopment policy has its own objectives. And the main objective is to fight poverty. The main objective of development policy is not to bring skilled workers from developing countries to Luxembourg. That is not, not the main objective. The main objective actually serves the realization of a human right. [...] Development policy must not be diluted by other, you can say, utilitarian considerations.’

Instead, a constructive separation between immigration and development policies is favoured:

‘Wir wollen uns aber nicht einmischen in Immigrationspolitik in Luxemburg. Und wir wollen auch nicht, dass die Migrationspolitik sich in unsere Politik einmischt. Also das, das ist schon eine, wie soll ich sagen, eine Abgrenzung im Guten, im konstruktiven Sinne soll das sein.’¹⁴⁰

At the same time, it was emphasized that policies of different Ministries should be coherent and this could be achieved through the introduction of a horizontal approach.¹⁴¹ However, it was also noted that there is a limit as to how much different Ministries can cooperate for joint initiatives in order to ensure a coherent government policy. Since development funds are earmarked for the implementation of projects in the global South, there is a ‘natural limit that we reach when we talk about immigration’.¹⁴²

One project that sought to combine aspects of migration and development is the often cited ‘Migrer les yeux ouverts’ (‘Migrate with open eyes’, December 2006 to November 2010) which had been set up in Praia, Cape Verde.¹⁴³ It was created as an interface between the Governments of Luxembourg and Cape Verde, at all different levels of government, and between the civil societies of both countries.¹⁴⁴ One of the objectives of the project was to links the NGOs and associations (particularly those of Cape Verdean immigrants) in Luxembourg with the civil society in Cape Verde, notably with a view to design and implement development projects.¹⁴⁵ It was intended to achieve a coalition of Cape Verdean organizations in Luxembourg so that they could request the accreditation as a separate NGO

Interview 3 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 12, lines 41-44; and page 13, lines 2-3.

¹⁴⁰ Free translation by the author: ‘But we do not want to interfere with the immigration policy in Luxembourg. And we also do not want that the migration policy intervenes with our policy. Well that, that is a, how should I put it, a separation in a positive sense, in a constructive way should that be.’ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 17, lines 14-17.

¹⁴¹ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 21, lines 28-32.

¹⁴² Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 14, lines 34-40.

¹⁴³ See also section 2.3 on co-operation with third countries.

¹⁴⁴ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 14, line 44 to page 15, line 3.

¹⁴⁵ Schiltz (2008).

from the Ministry of Development Cooperation and Humanitarian Assistance to benefit from co-financing schemes that are available for development organizations wishing to implement development projects.¹⁴⁶ However, it proved difficult to bring these organizations together due to the heterogeneity of groups and interests that were particularly evident for first-generation immigrants coming from nine different islands.¹⁴⁷ The second objective of the project was to provide the Cape Verdean government with information on the legislation in Luxembourg, the education, social security, the labour market etc., and to familiarize Cape Verdean nationals who considered joining their family members in Luxembourg about the opportunities and constraints of emigrating in order to enable them to make a well-informed decision.¹⁴⁸

The number of migrant associations in Luxembourg that are involved in development projects in non-EU countries is very low – according to a provisional overview of 2009, only 23 out of an estimated number of 1 000 to 6 700 migrant associations.¹⁴⁹ This small number may be explained by the size of the country and of the associations but also by their lack of resources and time. The non-urgency of the matter and the voluntary character of the initiatives are also put forward as explanations.¹⁵⁰

In January 2008, however, the Ministry of Foreign Affairs signed a co-operation agreement with the migrant association ‘Amitiés Luxembourg-Monténégro’¹⁵¹ regarding the implementation of a rural development programme in Petnjica, one of the most deprived regions in Montenegro and which is particularly affected by the return of failed applicants for international protection from Luxembourg.¹⁵² The project aims to raise the profile of the region among the Montenegrin diaspora in Luxembourg and the population in Montenegro,

¹⁴⁶ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 4, lines 41-45.

¹⁴⁷ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 4 line 48 to page 5 line 2 and page 5, lines 8-10.

¹⁴⁸ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 15, lines 9-20.

¹⁴⁹ Besch *et al.* (2010: 51).

¹⁵⁰ Besch *et al.* (2010: 54).

¹⁵¹ <http://www.montenegro.lu>

¹⁵² http://www.gouvernement.lu/salle_presse/actualite/2008/01-janvier/16-schmit-montenegro/index.html

to develop the local infrastructure to make the region an attractive for tourists and to improve local products.¹⁵³

Development cooperation and international exchange of persons

Despite the non-existence of bilateral labour migration schemes facilitating temporary or circular migration to Luxembourg, a number of small-scale development projects or initiatives can be identified that involve the international exchange of a limited number of people for the purpose of education and training.¹⁵⁴

Every year, the School of Hotel Management Alexis Heck (*lycée technique hôtelier*)¹⁵⁵ in Diekirch welcomes about ten trainees from Vietnam and Laos.¹⁵⁶ Both countries are among the ten privileged partner countries in which the Luxembourg Development Co-operation operates a policy of targeted intervention¹⁵⁷ and in which vocational training, particularly in the hospitality and tourism industries, is one main focus of their activities, next to the health sector and rural development.¹⁵⁸ Selected candidates have the opportunity to undergo a one-year training at the School of Hotel Management in Diekirch with the objective that they will use the training to work in one of the development projects in their countries of origin.¹⁵⁹ All costs associated with their travel, stay, and training are borne by Luxembourg Development Co-operation. This allocation of scholarships is possible because the exchange-cum-training programme fulfills all three conditions of the administrative practice of the Luxembourg Development Co-operation: (1) careful selection of participants who are already beneficiaries of a local development project, taking into account their socio-economic and educational background so as not to sponsor already privileged persons; (2) guaranteed support for students during their stay in Luxembourg including accommodation, free time activities and social support; and (3) the certainty that trainees will return to their countries of

¹⁵³ Besch *et al.* (2010: 53).

¹⁵⁴ The list does not claim to be exhaustive.

¹⁵⁵ <http://www.lthah.lu/>

¹⁵⁶ <http://www.lesessentiel.lu/news/story/16715573>

¹⁵⁷ Lux-Development (2009). See also <http://www.lux-development.lu/pays.lasso?lang=uk>

¹⁵⁸ http://www.lux-development.lu/pays_details.lasso?lang=uk&pays=vie (Vietnam) and http://www.lux-development.lu/pays_details.lasso?lang=uk&pays=lao (Laos)

¹⁵⁹ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 3, line 46 to page 4, line 16.

origin to act as multiplier, e.g. by providing of training and instruction at the local School of Hotel and Tourism Management.¹⁶⁰

In principle, allocating contractual scholarships (*bourses*) might be one way to organize temporary and circular student migration in development co-operation.¹⁶¹ In fact, the University of Luxembourg already set a quota of (up to) 30 places for high school graduates from African partner countries of the Luxembourg Development Co-operation (Burkina Faso, Cape Verde, Mali, Namibia, Niger and Senegal) who wish to follow a Bachelor's programme. Interested applicants have to take a central entrance exam which is organized every year in Dakar, Senegal.¹⁶² The University of Luxembourg is also committed to establish at least one university co-operation in each privileged partner country of the Luxembourg Development Co-operation.¹⁶³ Given limited resources, focus has so far been put on Cape Verde and Mali and respective agreements have been signed with the University of Praia and the University of Bamako.¹⁶⁴ However, a temporary and circular student migration programme would require extensive organizational effort, including the selection of suitable candidates in the country of origin, their reception in Luxembourg through one or more institutions to provide academic and social support, and the need to ensure that they will return to their country of origin to bring about a multiplier effect of their education.¹⁶⁵ Previous efforts concerning a respective co-operation between the University of Luxembourg and a university in Dakar, Senegal, did not materialize due to the complexity involved in the planning and implementation process.¹⁶⁶ Ultimately, development co-operation in the field of education and training is considered more promising if it takes place in the partner country and thus benefits a larger group of

¹⁶⁰ Interview 2 (EMN Study 'Circular and Temporary Migration'), 15 November 2010, with a political actor, page 3, lines 1-20, and page 4, lines 6-16.

¹⁶¹ Interview 2 (EMN Study 'Circular and Temporary Migration'), 15 November 2010, with a political actor, page 3, lines 23-25.

¹⁶² <http://www.guichet.public.lu/de/citoyens/enseignement-formation/etudes-superieures/inscription-etudes-superieures/inscription-uni-lux-ressortissants-tiers/index.html>

¹⁶³ Unstructured interview 3 (EMN Study 'Circular and Temporary Migration'), 24 March 2011, with the responsible officer at the University of Luxembourg.

¹⁶⁴ See section 2.3 on co-operation with third countries.

¹⁶⁵ Interview 2 (EMN Study 'Circular and Temporary Migration'), 15 November 2010, with a political actor, page 3, lines 22-34.

¹⁶⁶ Interview 3 (EMN Study 'Circular and Temporary Migration'), 15 November 2010, with a political actor, page 9, lines 1-18.

people than if a very small number of scholarship holders may come to Luxembourg for part of their education.¹⁶⁷

Further examples of development cooperation projects or initiatives involving the international exchange of persons include the quality partnership for the training of Senegalese teachers in Luxembourg and France in the context of which an eight-week long training of 19 Senegalese teachers of the secondary school of Thiès in different institutions took place in Luxembourg and France in February and March 2007.¹⁶⁸ Or the co-operation between the Luxembourg-based migrant association ‘Cap-Vert Espoir et Développement’ and the agricultural technical secondary school (*lycée technique agricole*) of Ettelbrück¹⁶⁹ within the framework of which teachers will travel to Cape Verde to analyse the needs of schools that offer agricultural training, such as the professionalization of teachers, the improvement of the quality of teaching, and the fight against rural exodus.¹⁷⁰

On a professional level, Luxembourg nationals with a migratory background are welcome to participate in the one-year traineeship ‘Introduction to Co-operation Development’ funded by the Luxembourg Ministry of Foreign Affairs, offering young people the opportunity to gain work experience in one of the projects carried out by the Luxembourg Agency for Development Co-operation.¹⁷¹ Graduate students could also apply for the Junior Professional Officer (JPO) Programme of the United Nations¹⁷² which provides young professionals pursuing a career in development with hands-on experience in multi-lateral technical co-operation, or for the Junior Experts in Delegation (JED) Programme of the European Commission¹⁷³ aimed at providing young university graduates and professionals with experience of working in an EU Delegation in a developing country.¹⁷⁴

¹⁶⁷ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 3, lines 36-37.

¹⁶⁸ http://www.lux-development.lu/news.lasso?lang=fr&nw= 07_004

¹⁶⁹ http://www.lta.lu/LTA_projekteKooperation.php

¹⁷⁰ Besch *et al.* (2010: 53p.).

¹⁷¹ <http://www.lux-development.lu/recrutement.lasso?lang=uk&sel=m>

¹⁷² <http://www.jposc.org/>

¹⁷³ http://www.eeas.europa.eu/delegations/jed/index_en.htm

¹⁷⁴ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 20, lines 26-42.

A sector of activity that is characterized by a high degree of mobility of persons and crucial for development is research. In Luxembourg, four public research centres (*centres de recherche publique, CRP*) were established by law¹⁷⁵ in the late 1980s, namely CRP-Gabriel Lippmann¹⁷⁶, CRP-Henri Tudor¹⁷⁷, CRP-Health¹⁷⁸, and CEPS/INSTEAD¹⁷⁹. In 2003, the University of Luxembourg was founded in order to (1) provide undergraduate, graduate and doctoral education to students; (2) to contribute to the training and continuing education of teachers of all types of schools; (3) to offer life-long learning in fields that are relevant to its competence; (4) to develop fundamental and applied research; to promote research, to develop a scientific culture, to disseminate knowledge and transfer research results; and (5) to contribute to the social, cultural and economic development of Luxembourg.¹⁸⁰ Over the past ten years, the Government has pursued a policy that supported the continuous expansion of research and teaching activities in order to foster a knowledge-based economy and society.¹⁸¹ More recently, the Parliament passed the Law of 5 June 2009, providing the legislative framework for the further promotion of research, development and innovation. Government spending on public research and development increased remarkably and the government is showing strong commitment to continue in this direction.¹⁸²

However, despite major investments a small country like Luxembourg will only have very limited resources for research when compared to the global spend. It was therefore considered imperative to focus on a limited number of promising research areas. The National Research Fund (*Fonds Nationale de la Recherche*) launched a foresight exercise in December 2005 with the objective to mobilise a wide range of stakeholders to define and assess the most

¹⁷⁵ Law of 9 March 1987 having as objective 1. the Organisation of Research and of Technological Development in the Public Sector; 2. the Technology Transfer and Scientific and Technical Co-operation between Businesses and the Public Sector; and Law of 10 November 1989 on the Creation of a Centre for the Study of Population, Poverty and Socio-Economic Policies next to the Minister of State.

¹⁷⁶ <http://www.crppl.lu/>

¹⁷⁷ <http://www.tudor.lu/>

¹⁷⁸ <http://www.crp-sante.lu/>

¹⁷⁹ <http://www.ceps.lu/>

¹⁸⁰ Article 2 (mission and objectives of the University) of the Law of 12 August 2003 on the Establishment of the University of Luxembourg.

¹⁸¹ Interview 4 (EMN Study ‘Circular and Temporary Migration’), 18 November 2010, with two public officers of the Luxembourg administration, page 3, lines 3-42.

¹⁸² Government of the Grand Duchy of Luxembourg (2009: 85p.).

relevant research priorities for Luxembourg. The identified national research priorities are (1) innovation in services; (2) sustainable resource management; (3) new functional and intelligent materials and surfaces, and new sensing applications; (4) biomedical sciences; (5) labour market, educational requirements and social protection; and (6) identities, diversity and integration.¹⁸³

In November 2010, the Government of Luxembourg adopted the project for a national reform programme in the framework of the Europe 2020 strategy for smart, sustainable, and inclusive growth¹⁸⁴. The Government has set as national goal a Research and Development intensity ratio of 2.6% of its gross domestic product. Among the actions put forward to attain this goal is the idea of developing a competency centre in personalised medicine, but also to have the concept of ‘knowledge triangle’, which aims to reinforce the interaction between research, education and innovation as key drivers of a knowledge-based society, as an integral part of government actions. Further priorities established in the national reform programme are the support of an intellectual property policy within public research institutes, the creation of start-ups or spin-offs, and attracting and retaining the human resources indispensable for the development of research, development and innovation.¹⁸⁵

The political will to attract researchers had already been expressed in the government programme 2009-2014. This shall be achieved through creating an environment that is favourable to the development of scientific and technical employment, thus allowing for the promotion of international and intersectional career perspectives and mobility of researchers.¹⁸⁶ Transposing Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, the Law of 29 August 2008 on the Free Movement of Persons and Immigration introduced a particular residence permit for third-country national researchers (*autorisation de séjour du chercheur*) wishing to work in Luxembourg.¹⁸⁷ Prior to the legislative change, some public research centres would deliberately not attract third-country national researchers due to the lengthy and complicated admission procedures. The same centres are now content with the smooth and fast admission

¹⁸³ Fonds National de la Recherche Luxembourg (2007).

¹⁸⁴ http://ec.europa.eu/europe2020/index_en.htm

¹⁸⁵ <http://www.europaforum.public.lu/fr/actualites/2010/11/europe2020-projet-pnr/index.html>

¹⁸⁶ Government of the Grand Duchy of Luxembourg (2009: 87).

¹⁸⁷ For detailed information on the admission criteria see Section 2.2.1.8.

procedure of non-EU researchers and the good communication with the Directorate of Immigration.¹⁸⁸ In their Annual Report 2009, the Ministry of Higher Education and Research emphasized the efforts of the Directorate of Immigration to simplify the recruitment procedures for employed wage-earning doctoral students (*doctorants-salariés*) who are third-country nationals and want to work at the Gabriel Lippmann Public Research Centre.¹⁸⁹ However, it is important to note that research programmes¹⁹⁰ and study grants¹⁹¹ of the National Research Fund (*Fonds National de la Recherche*) are open to all researchers, regardless of their nationality. There are no programmes or initiatives specifically targeting third-country nationals, in fact no differentiation is made between Luxembourg nationals, EU citizens or third-country nationals.¹⁹² For the National Research Fund, the quality of the proposed research project and the qualifications of the applicant are the key acceptance criteria, not his or her nationality.¹⁹³ Yet, over time, it has turned out that the geographical area from which researchers are recruited has become wide and wider.¹⁹⁴ Similarly, the University of Luxembourg, in light of their internationalisation efforts and the lack of suitable candidates in the country, intends to purposefully recruit prospective doctoral students from Eastern Europe in the future.¹⁹⁵ In addition, public research institutes aim to ‘re-attract’ researchers who are Luxembourg nationals and have gone abroad for their education and/or academic career.¹⁹⁶ However, it has been pointed out that, in order to attract international researchers, the general conditions for incoming researchers need to be improved and

¹⁸⁸ Interview 4 (EMN Study ‘Circular and Temporary Migration’), 18 November 2010, with two public officers of the Luxembourg administration, page 11, lines 15-18.

¹⁸⁹ Ministry of Higher Education and Research (2009: 29).

¹⁹⁰ Examples are the ATTRACT Programme which aims to build on the excellence, dynamism and creativity of research in Luxembourg by attracting young researchers with a high level of ability in science or technology and proven experience in a professional research context who not yet established in Luxembourg; and the PEARL Programme which aims to attract internationally recognised senior researchers who will transfer and establish their research programme in Luxembourg in order to accelerate the development of and to strengthen the national research priorities. See also

<http://www.fnr.lu/en/Grants-Activities/Research-Programmes>

¹⁹¹ Study grants (*aides à la formation-recherche*) are meant to support researchers in their doctoral and postdoctoral training. See also <http://www.afr.lu/>

¹⁹² Interview 4 (EMN Study ‘Circular and Temporary Migration’), 18 November 2010, with two public officers of the Luxembourg administration, page 16, lines 13-18.

¹⁹³ Interview 4 (EMN Study ‘Circular and Temporary Migration’), 18 November 2010, with two public officers of the Luxembourg administration, page 15, lines 33-45.

¹⁹⁴ Interview 4 (EMN Study ‘Circular and Temporary Migration’), 18 November 2010, with two public officers of the Luxembourg administration, page 25, lines 42-45.

¹⁹⁵ Unstructured interview 3 (EMN Study ‘Circular and Temporary Migration’), 24 March 2011, with the responsible officer at the University of Luxembourg.

¹⁹⁶ Interview 4 (EMN Study ‘Circular and Temporary Migration’), 18 November 2010, with two public officers of the Luxembourg administration, page 14, lines 4-9.

potential barriers to temporary settlement be reduced. This includes, amongst other things, improved access to affordable and temporary housing and to flexible child care and international schooling. The multilingual character of Luxembourg may pose considerable challenges for persons who do not have at least a basic knowledge of any of the three languages and, considering the shortness of their stay, may not be interested or in the position to learn a new language.¹⁹⁷

In its programme for the legislative period 2009-2014, the Government of Luxembourg asserts that it is convinced of the potential of reciprocal reinforcement between research and development. It will therefore seek better synergies between national policies of research, development and innovation and development assistance.¹⁹⁸ One way to better integrate these two policy fields may be through specific programmes which allow researchers from developing countries to obtain further training in Luxembourg that they can utilize after their return to improve the local conditions.¹⁹⁹

In June 2009, the National Research Fund (*Fonds Nationale de la Recherche*) and the Division of Development Co-operation at the Ministry of Foreign Affairs signed a cooperation contract in which they express their mutual interest in facilitating research activities in cooperation with developing countries. At the end of 2009, several projects were about to be developed, e.g. with the Red Cross Shelter Reference Center and WHO Center for Public Health.²⁰⁰

A Luxembourg-based organisation that aims to encourage the development of Africa through science and the transfer of suitable knowledge and technology is the *Agence pour la Coopération Scientifique Afrique Luxembourg* (ACSAL)²⁰¹. It was created in 2005 and is composed of professors at the University of Luxembourg, experts in Research and Development in various scientific fields, and a network of African scientists in the diaspora. Members consider science being at the heart of the development process in Africa and thus work to develop strategies for a strong scientific cooperation between Luxembourg and the African partner countries of the Luxembourg Development Cooperation. ACSAL collaborates

¹⁹⁷ Interview 4 (EMN Study ‘Circular and Temporary Migration’), 18 November 2010, with two public officers of the Luxembourg administration, page 12, line 10 to page 13, line 18.

¹⁹⁸ Gouvernement of the Grand Duchy of Luxembourg (2009: 86).

¹⁹⁹ Interview 4 (EMN Study ‘Circular and Temporary Migration’), 18 November 2010, with two public officers of the Luxembourg administration, page 18, line 32, to page 19, line 36.

²⁰⁰ Ministry of Higher Education and Research (2009: 82).

²⁰¹ <http://www.acsal-science.org/>

with research centres in Luxembourg and universities and scientific institutions in Africa in order to give African researchers the opportunity to develop and carry out research projects whose solutions will allow to answer efficiently to a wide range of questions related to the development of their country. ACSAL is convinced that this will at least reduce, or even prevent emigration and brain drain. The organisation also holds and participates in workshops and conferences.²⁰²

2.2 National Legislation, Conditions, Criteria and Implementation

Although there are no specific policies or programmes in place in Luxembourg regarding circular and temporary migration, the next section discusses to what extent the current legal framework might facilitate or hamper ‘spontaneous’ circular and temporary migration of both settled migrants and potential migrants. This is because law is a ‘potential facilitator of policy’. While the national legislation was not drafted with circular and temporary migration specifically in mind, if it is thought desirable to facilitate circular migration, some legal changes might be needed.²⁰³

The Law of 29 August 2008 on Free Movement of Persons and Immigration constituted a major overhaul of the national immigration legislation. Until then, matters related to the entry and stay of foreigners were largely governed by administrative practice as the Law of 28 March 1972 proved to be no longer adequate to regulate the new migration realities²⁰⁴. The Government of Luxembourg affirmed the positive contribution of legal immigration to the country’s society and economy in the 2004-2009 governmental programme²⁰⁵ and announced its intention to introduce a new immigration law. On the one hand, it aimed to give Luxembourg a modern legislation that takes into account the present migration and labour market situation. On the other hand, the new law also brought the national legislation in line with the EU wide harmonization of immigration policies by transposing several EU directives. This included Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Council Directive 2004/81/EC

²⁰² For more information, see Agence pour la Coopération Scientifique Afrique Luxembourg (2009 and 2010).

²⁰³ Cremona (2008: 3).

²⁰⁴ Chamber of Deputies of the Grand Duchy of Luxembourg (2007: 2).

²⁰⁵ Government of Luxembourg (2004: 10, points 6 and 8).

of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who cooperate with the competent authorities, Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. In addition, the law establishes the right to free movement of EU citizens in the national legislation by transposing Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

The adoption of the Law of 29 August 2008 on Free Movement of Persons and Immigration was part and parcel of a wider legal reform on immigration-related matters that included the Law of 23 October 2008 on Luxembourgish Nationality and the Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand-Duchy of Luxembourg.

2.2.1 Relevant Categories of Immigrants

The Law of 29 August 2008 on the Free Movement of Persons and Immigration introduced several new residence categories, compared to a single category within the previous legal framework, and stipulates the rules of entry and of length of stay for immigrants in each of these categories. They cover the categories of migrants mentioned in COM(2007) 248 final on circular migration and mobility partnerships between the European Union and third countries, i.e. workers, including seasonal workers, researchers, students, trainees and volunteers²⁰⁶, and will be described in the following. In the new national legislation, work permits and residence permits for third-country nationals have been merged into a single residence permit to accelerate the processing of applications. In the case of employment, it is no longer the

²⁰⁶ COM(2007) 248 final (p. 8) also mentions '[t]hird-country nationals, who wish to take part in intercultural people-to-people exchanges and other activities in the field of culture, active citizenship, education and youth (such as, for example, training courses, seminars, events, study visits)'. In the framework of this study, however, they are not considered temporary or circular migrants given the short duration of their stay which does not involve at least a temporary change of place of residence, the defining feature of migration. Non-nationals who wish to stay in Luxembourg for a period shorter than three months are subject to Section 1 of the Law of 29 August 2008.

employer who submits the application for a work permit but the third-country national himself or herself who requests an authorization to stay as salaried worker (*autorisation de séjour en vue d'une activité salarié*). As of 1 November 2007, all sectors of the internal labour market are open to nationals of the eight countries which had joined the European Union on 1 May 2004, i.e., the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.²⁰⁷ Only Bulgarian and Romanian citizens are obliged to request a work permit (*autorisation de travail*) until 31 December 2011 to access the Luxembourg labour market, unless they are a family member of an EU citizen not bound by this condition.²⁰⁸

2.2.1.1 Salaried Worker

In order to obtain an authorization to stay as salaried worker, the third-country national must meet the four following conditions²⁰⁹ (Article 42 Section 1):

- a) possess a work contract for a position that has been declared vacant by the employer to the national employment office (ADEM);
- b) pass a labour market test, i.e. the national employment office (ADEM) verified that no appropriately skilled job-seeker of national or EU origin was available to fill the vacancy in question (*priorité d'embauche*);
- c) have the required professional qualifications for the respective job; and
- d) the intended work serves the economic interests of Luxembourg²¹⁰.

²⁰⁷ http://www.gouvernement.lu/salle_presse/actualite/2007/09/20schmit_travailleurs/index.html

²⁰⁸ Government Council of 4 September 2008 on the access of Bulgarian and Romanian nationals to the Luxembourgish labour market, <http://www.legilux.public.lu/leg/a/archives/2008/0168/a168.pdf#page=2>

²⁰⁹ In addition, all third-country nationals wishing to enter and stay in Luxembourg, irrespective of the length of their stay, must a) possess a valid passport and a valid visa if this is required; b) not be the object of a notification for non-admission; c) not be the object of an injunction forbidding entry on the territory; d) not be considered as a threat for public order, domestic security, public health or international relations of Luxembourg; and e) must justify the object and the conditions of the foreseen stay, and justify having sufficient personal resources, as much for the planned length of stay as for the return trip to the country of origin, or justify the possibility of legally acquiring these means, and have health insurance coverage which covers all risks within the territory (Article 34 Section 2 of the Law of 29 August 2008).

²¹⁰ Within the terms of the Grand-Ducal Regulation of 5 September 2008 and in application of the Law of 29 August 2008 on the Free Movement of Persons and Immigration (Articles 149-151), three consultative bodies have been created which advise the Ministry of Foreign Affairs during the decision-making process. The principal mission of the CCTS is to ensure the general conformity with the legal conditions which control the renewal or the conference of the residence document of employed workers or the work permit of third-country nationals. The CCTS is composed of 10 members, seconded by the competent ministries.

Upon the receipt of the application for a residence permit for salaried workers (*titre de séjour pour travailleur salarié*), the fulfilment of the four conditions stipulated in Article 41 Section 2 is verified by the national employment office (ADEM) and the Advisory Committee for Workers (CCTS) (Article 42 Section 2). However, the Minister of Labour, Employment and Immigration may grant an authorization to stay to a third-country national without the consultation of the CCTS and without a labour market test if the applicant intends to work in a sector or a profession which experiences recruitment problems (Article 42 Section 3).

The third-country national who received an authorization to stay as salaried worker is granted a residence permit as salaried worker after his or her arrival in Luxembourg if he or she gives proof of appropriate accommodation and a medical certificate. The permit is valid for one year maximum and for one sector and one profession alone with every employer (Article 43 Section 1 in conjunction with Article 40). The residence permit is renewable, upon request, for two additional years if the salaried worker has a work contract for a job that had been declared vacant to ADEM (Article 43 Section 2 in conjunction with Article 42 Section 1 Point 4). Before the second renewal of the residence permit, changing the sector is only possible if the conditions laid out in Article 42 Section 1 are fulfilled (Article 43 Section 3). From the second renewal on, the residence permit is valid for three years and can be used for all professions in all sectors (Article 43 Section 4).

In their opinion on the bill of the Law on the Free Movement of Persons and Immigration, the Chamber of Commerce expressed their regret that the conditions to obtain an authorization to stay as salaried worker (*autorisation de séjour en vue d'une activité salarié*) remained too strict. According to them, it is difficult to understand that the applicant needs to establish that the requested activity serves the economic interests of the country given the labour demand in numerous fields. They also regret that the applicant must provide a work contract and not simply a promise of employment. In addition, they point out that although the authorization to stay as salaried worker is no longer limited to one employer, it is still, for a certain period of time, limited to a sector and this concept is not defined in the bill (and the subsequent law).²¹¹

²¹¹ Chamber of Commerce (2007: 2).

Third-country nationals who hold an authorization to stay (*autorisation de séjour*) in one of the neighbouring countries and intend to practice a salaried activity in an employed capacity in Luxembourg are issued with a work permit (*autorisation de travail*) if they meet the conditions concerning the exercise of an employed activity (Article 50 in conjunction with Article 42, 43 and 45). Third-country national cross-border workers must pass a labour market test, i.e. their future employer must demonstrate that no suitable citizen of Luxembourg or any other EU Member State is available to do the work (Article 50 in conjunction with Articles 42, 43 and 45). However, those third-country national who hold an authorization to stay in a cross-border country where he or she resides and who married to an EU-citizen working as cross-border commuter in Luxembourg do not need to apply for a separate work permit or pass a labour market test to be able to work in Luxembourg.

Au pairs can be considered as a particular group of temporary migrants. This is because while ‘cultural exchange is assumed to be the motivation for au pairs and host families, with housework and childcare being considered an insignificant form of repayment [...], in reality the cheap, flexible assistance that au pairs supply within the home is often the main reason for families to take part in the scheme’²¹². The experience in Luxembourg indeed showed that the majority of au pairs took care of young children all day while the parents were working full-time and as such could practically be regarded as migrant domestic workers. This imbalance between workload and opportunities to improve their linguistic skills and experience life in another country was one of the main motives of the Government of Luxembourg for withdrawing from the European Agreement on Au Pair Placements (ETS No. 68) on 23 September 2002.²¹³ The withdrawal was also a response to the judgment of the first instance administrative court (*Tribunal administratif*) of 13 May 2002²¹⁴ stating that the European Agreement on Au Pair Placements does not necessarily only apply to nationals of a Member State of the European Council or a Signatory state to the Agreement since Luxembourg had never made use of the option to restrict the territorial application of the Agreement. In this particular case, a Russian national concluded an au pair agreement with a Luxembourgish couple after the Ministry of Justice had denied to extend her authorization to stay (*autorisation de séjour*) as nightclub entertainer (*artiste de cabaret*) and the Ministry of

²¹² Newcombe (2004: 2).

²¹³ Biltgen (2003).

²¹⁴ Judgement of the first instance administrative court (*Tribunal administratif*) of 13 May 2002.

Foreign Affairs had declined to issue a tourist visa subsequent to her authorization to stay. As such, the withdrawal from the Agreement aimed to prevent that au pair placements become a way to extend the stay of nightclub entertainers in Luxembourg beyond the expiration of their authorization to stay or a back-way to enter the Luxembourgish labour market.²¹⁵ As part of their efforts to fight human trafficking, the Government did no longer issue authorizations for third-country nationals who wish to work in Luxembourg as nightclub entertainer or in a similar occupation after 1 May 2004.²¹⁶

The withdrawal from the European Agreement on Au Pair Placements became effective on 24 March 2003. Since then Luxembourg does not recognise the legal status of au pairs and any person who wishes to come to a host family in Luxembourg has to be employed in accordance with the Labour Code (*Code du travail*) and will have to pay social security. People who are not nationals of an EU country are subject to the legislation concerning foreign salaried workers' entry to and stay in the territory of the Luxembourg, i.e. since 1 October 2008 the Law of 29 August 2008 on the Free Movement of Persons and Immigration.²¹⁷ In practice, third-country nationals are unlikely to receive permission to work or stay as au pair in Luxembourg.²¹⁸

2.2.1.2 Seasonal Worker

Seasonal workers are a typical and often cited example of low-skilled temporary migrants, and if it involves repeated movements, circular migrants. The Law of 29 August 2008 on the Free Movement of Persons and Immigration, however, does neither contain a particular status for seasonal labour migrants, be they EU citizens or third-country nationals, nor does it include particular regulations for seasonal work. This will change once the proposal of 13 July 2010 for an EU Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment will be adopted and transposed into national law. According to the Commission, the said Directive aims to 'contribute to the effective management of migration flows for the specific category of seasonal temporary migration by

²¹⁵ Biltgen (2008).

²¹⁶ Information contained in the judgment of the first instance administrative court (*Tribunal administratif*) of 16 January 2008 (page 5).

²¹⁷ http://www.adem.public.lu/employeur/infos/placement_au_pair.html

²¹⁸ http://europa.eu/youth/working/au_pair/index_lu_en.html

setting out fair and transparent rules for admission and stay, while at the same time providing for incentives and safeguards to prevent temporary stay from becoming permanent’²¹⁹.

Currently, the hiring of seasonal workers is governed through a number of Grand-Ducal Regulations and the Labour Code (*Code du travail*). Seasonal employment contracts (*contrats de travail à caractère saisonnier*) are particular fixed-term work contracts that can be concluded for particular work that is tied to the rhythm of the seasons or the collective mode of life (e.g., tourism), that cannot be done during the rest of the year and that is not intended for a periodic increase of the normal activity of the respective company. In addition, the seasonal contract applies to activities that need to be conducted repeatedly and during the same period of every year.²²⁰ This includes jobs in the agricultural and grape harvest, in the packaging of harvested products, as camp councillor or holiday representative, as travel and tour guide, as life guard, in the maintenance of beaches, outdoor swimming pools and campgrounds, jobs in retail shops, hotels and restaurants that are open only part of the year or whose operation increases regularly and predictably due to the holiday season, and work in aviation companies and companies of the transportation of passengers whose operation increases regularly and predictably during the holiday season (Article 1 of the Grand-Ducal Regulation of 11 July 1989).

Before hiring a seasonal worker and concluding a seasonal work contract, every employer has to declare the vacancy to the National Employment Office (ADEM). This declaration allows ADEM to conduct a labour market test in order to verify whether, if the potential seasonal worker is a third-country national, equally qualified nationals or EU citizens are available to fill the position (*priorité d'embauche*). A seasonal employment contract is limited to 10 months in total within a period of 12 successive months including contract renewals. It does not have to contain a fixed expiry date. However, a conditional expiry date can be envisaged, in which case a minimal duration of the contract must be indicated. The seasonal employment contract expires once the activity for which the contract has been established is completed.

When the seasonal employment contract reaches its expiry date, the employer and salaried worker can choose a) to not continue their working relationship after the expiry; b) to continue their working relationship with a permanent work contract (*contrat de travail à*

²¹⁹ COM(2010) 379 final of 13 July 2010, p. 14 point 6.

²²⁰ <http://www.guichet.public.lu/fr/entreprises/ressources-humaines/contrat-travail/elaboration-contrat/saisonnier/>

durée indéterminée); or c) to continue their working relationship with a fixed-term work contract (*contrat de travail à durée déterminée*). In doing so, the employer does not need to respect the waiting period that usually applies to fixed-term contracts.

In the case of a permanent work contract, the working relationship can be either continued under the same conditions and obligations provided for initially in the seasonal employment contract, or the employer and salaried worker negotiate the conditions and obligations of a new contract which immediately replaces the seasonal employment contract. Either way, the permanent work contract does not contain a trial period and the salaried worker retains the seniority acquired under the seasonal employment contract.

Alternatively, the working relationship can be continued with a fixed-term work contract by renewing the seasonal employment contract. The employer can renew a seasonal employment contract with the same salaried worker for an unlimited number of seasons. Nonetheless, it remains a fixed-term contract. However, if the seasonal contract includes a renewal clause for the next season and the working relationship between the same employer and same salaried worker recurs for more than two seasons, then the working relation will be considered as permanent. Every employer not wishing to renew the contract with the same salaried worker after three consecutive seasons has to lay off the salaried worker.²²¹

In contrast to seasonal workers of EU-origin who enjoy freedom of movement and residence within the territory of the EU Member States, third-country nationals who wish to work as seasonal worker are obliged to obtain an authorisation to stay as salaried worker if they are going to stay longer than three months in Luxembourg (Article 42 of the Law of 29 August 2008). They are also obliged to have an authorisation to work even if they are going stay less than three months (Article 35 Section 1 of the Law of 29 August 2008). Furthermore, while EU seasonal workers only need to declare their arrival and obtain an address registration certificate (*attestation d'enregistrement*) from the municipal office (*commune*) of their place of residence if they intend to stay for more than 90 days (Article 8 of the Law of the 29 August 2008), third-country national seasonal workers must make a declaration of arrival (*declaration d'arrivée*) at the municipal office within three working days of their arrival

²²¹ <http://www.guichet.public.lu/fr/entreprises/ressources-humaines/contrat-travail/elaboration-contrat/saisonnier/>

irrespective of the intended length of stay (Article 36 and Article 40 of the Law of 29 August 2008). If the person is staying in a hotel or other tourist accommodation, they will need to fill in an accommodation form (*fiche d'hébergement*) (Article 1 of the Law of 24 June 2008 having as objective the control of travellers in accommodation facilities). In line with Articles 4 and 179 of Book I of the Social Security Code (*Code de la Sécurité Sociale*)²²², seasonal workers who come to work in Luxembourg for a period of less than three months per calendar year are exempted from the mandatory payment of health insurance and pension scheme premiums. But even the number of seasonal workers who work for more than three months and are included in the social security data collected and administered by the General Inspectorate for Social Security (IGSS) cannot be identified because there is not a specific category for seasonal workers. Likewise, the category of 'seasonal worker' thus does not figure within national labour statistics of the National Employment Office (ADEM). As a consequence, it is not possible to identify the number of seasonal workers in Luxembourg.

Example: Viticulture along the Moselle valley

A branch of the economy that depends heavily on seasonal workers is the wine industry along the Moselle River, which for 42 km makes up part of the southeastern border between Luxembourg and Germany. There is a continuous history of winemaking in that region going back to Ancient Roman times.²²³ Seasonal workers are needed during the three busiest periods on the viticulture and winemaking calendar, i.e., for the foliage work, the pruning and the grape harvest. The demand for seasonal workers is stable.²²⁴ It is estimated that, overall, between 300 and 400 persons are needed every year to help with the said activities.²²⁵ More than 90 percent of these are estimated to come from Poland. However, an increasing number of French workers from the border region are engaging in seasonal work as commuters.²²⁶

²²² General Inspectorate of Social Security (2011).

²²³ <http://www.ivv.public.lu/anbaugebiet/geschichte/index.html>

²²⁴ Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 11, lines 36-46.

²²⁵ Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 7, lines 31.

²²⁶ Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 5, line 29-38.

Polish men and women were for the first time hired in 1927 to work temporarily on Luxembourgish farms in order to satisfy the labour demand which could not be met locally. The recruitment had been initiated by the Luxembourgish Federation of Agricultural Associations (*Fédération luxembourgeoise des Comices Agricoles*) and was done with support of the Government of Luxembourg, and through the Central Office of Agricultural Labour Force (*Office central de la main-d'œuvre agricole*) in Paris (France) and the French General Society of Immigration (*Société générale d'immigration*) in Poland. Their numbers increased from 69 persons in 1927 and 80 persons in 1928 respectively to 850 men and women in 1937 given the increasing shortage of agricultural workers in Luxembourg despite the severe worldwide economic downturn in the 1930s and the ensuing restrictions on labour immigration (from which agricultural workers had been exempted). This increase can also be explained by that fact that the introduction of the compulsory labour and military service for German men in the wake of the Second World War as well as the growing labour demands of the German industry led to the almost complete drying up of the regular arrival of German workers, which had to be substituted by Polish workers. Similarly, in 1937, the Government of Luxembourg did not succeed in concluding an agreement with the Belgian Government on the recruitment of Belgian agricultural workers. The systematic recruitment of Polish workers into the Luxembourgish agriculture thus intensified between 1937 and the beginning of 1940 and came to a stop with the invasion of the Grand Duchy by the German army.²²⁷

Since the 1970s, Polish workers come to Luxembourg regularly to work as seasonal workers in the foliage work, the pruning and the grape harvest.²²⁸ Before Luxembourg granted Polish workers full access to the internal labour market (freedom of movement) from 1 November 2007 on, they had to fulfill the legal conditions for the entry and stay of foreign nationals, including the labour market test and the registration at the municipal office. However, simplified solutions were found between the Chamber of Agriculture²²⁹ and the then Ministry of Foreign Affairs and Immigration (now Ministry of Labour, Employment and Immigration) to allow for the fast recruitment of seasonal staff with limited administrative effort.²³⁰ Over

²²⁷ Thill (2010) provides a detailed description of the history of the recruitment of Polish workers in the agricultural sector in Luxembourg before the Second World War.

²²⁸ Pauly (2010: 72).

²²⁹ <http://www.lwk.lu>

²³⁰ Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 3, line 49 till page 4, line 5, and page 4, lines 34-37.

the years, close contacts between Luxembourgish families of winemakers and Polish workers developed. It is through these informal contacts that many seasonal workers from Poland are recruited nowadays. They are informed at short notice by the viticulturists about the upcoming harvest, whose date slightly fluctuates every year. Given that each of these activities only take between three and four weeks, Polish workers often take a holiday from their regular jobs in Poland to come to work in Luxembourg. In some cases, the viticulturists always ask the same Polish family and if one family member can or does not want to come and work as seasonal worker anymore, they may ask to bring another member or to bring two or three other colleagues. Similarly, the time for grape harvest might vary to some extent depending on the type of wine. As a consequence, some workers might be done harvesting the early types and they still want to work, so they approach other viticulturists and ask whether they can work for them.²³¹ Many people come every year to do seasonal work, but there are also new people and others who worked on the German side of the Moselle river.²³² The accommodation and boarding is agreed upon in a flexible and individual manner. There might be some Polish workers who have family or friends close by and stay there, or they stay with the viticulturalist and some of the money gets deducted from their salary for accommodation and/or boarding.²³³

It has been mentioned in the semi structured interview with an expert that a couple of years ago many Polish people went to work in the United Kingdom, possibly due to the lower costs of living, and then it was difficult to find enough people to work in the wine industry.²³⁴ Asked about the qualifications that seasonal workers might gain during the grape harvest, it was replied that none of it is relevant to the labour market in Poland.²³⁵

²³¹ Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 5, line 44 till page 5, line 19.

²³² Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 17, lines 2-5.

²³³ Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 14, lines 1-39.

²³⁴ Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 7, lines 7-8.

²³⁵ Interview 5 (EMN Study 'Circular and Temporary Migration'), 30 November 2010, with an expert, page 16, lines 18.

2.2.1.3 Highly Qualified Worker

Albeit the Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ('Blue Card Directive') has been adopted by the European Council only on 25 May 2009, Article 45 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration already introduced a residence permit specifically for highly qualified workers (*titre de séjour pour travailleur hautement qualifié*) on the basis of the proposal for the respective Council Directive (COM(2007) 637 final). The Government thereby aimed at facilitating the recruitment of highly qualified third-country nationals for job positions that require particular professional knowledge and abilities by simplifying and accelerating the administrative procedures on the hand and by granting greater access to the labour market on the other hand.²³⁶

The draft bill aimed at the transposition of Directive 2009/50/EC, including the regulation of the intra-EU mobility of highly qualified third-country nationals who hold the EU Blue Card, into national law was on the agenda of the Government Council on 10 June 2011.²³⁷ Members of Government expressed their approval to amend the present Law of 29 August on the Free Movement of Persons and Immigration accordingly.²³⁸

According to Article 45 Section 1 of the Law of 29 August 2008, a third-country national is considered highly qualified if he or she has a higher education degree or specialized professional experience of at least five years. Unlike salaried workers (*travailleurs salariés*), the highly qualified worker must only prove that a) he or she meets the legal conditions to enter the territory stipulated in Article 34 Section 1, b) possesses a work contract for which he or she has the required qualifications, and c) receives a salary which is at least equal to the equivalent of three times the social minimum wage for a non-qualified worker²³⁹ (Article 45 Section 1). On 1 January 2011, the social minimum wage for a non-qualified worker was set

²³⁶ Chamber of Deputies of the Grand Duchy of Luxembourg (2007: 69).

²³⁷ Ministry of Foreign Affairs (2011: 24).

²³⁸ http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/06-juin/10-conseil/index.html#4

²³⁹ The minimum wage for a highly qualified third-country national to be eligible for a residence permit as 'highly qualified worker' is determined by Article 1 of the Grand-Ducal Regulation of 26 September 2008.

by law at 1.757,56 € gross per month²⁴⁰. Prior to the adoption of the Law of 29 August 2008, the Chamber of Craft Trades (*Chambre des Métiers*) argued that the wage level for obtaining a residence permit as highly qualified worker may have been set at too a high level in order to enable young highly qualified workers to benefit from this provision as, in fact, companies are rarely willing to pay such high salaries at the beginning of the employment relationship.²⁴¹

Furthermore, highly qualified third-country nationals do not have to undergo a labour market test to verify that no equally qualified EU citizen or Luxembourg national could have been found to fill the position. As a result, the Directorate of Immigration at the Ministry of Foreign Affairs can grant an authorization to stay (*autorisation de séjour*) without having to take into account the opinions of the Advisory Committee for Workers (CCTS) and the National Employment Office (ADEM).

After their arrival in Luxembourg, third-country nationals are granted a residence permit (*titre de séjour pour travailleur hautement qualifié*) for a maximum period of three years if they have registered with the local authority of their place of residence, have undergone a medical examination and can prove that they have appropriate accommodation (Article 45 Section 2 in conjunction with Article 40). Upon request, the permit is renewable for three years if the requirements for obtaining it are still being met (Article 45 Section 3). The right of renewal also applies to cases of change of employer or work sector as long as the new job meets the criteria of highly qualified employment as laid out in Article 45 Section 1. In any other cases, the change of employer or work sector is subject to authorization according to the above-mentioned (stricter) conditions for salaried workers (*travailleurs salariés*) (Article 45 Section 4).

The EU Blue Card Directive has been adopted to

‘address [...] labour shortages by fostering the admission and mobility - for the purposes of highly qualified employment - of third-country nationals for stays of more than three months, in order to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth. To reach

²⁴⁰ <http://www.guichet.public.lu/fr/entreprises/ressources-humaines/remuneration-travailleur/paiement-remunerations/salaire/index.html>

²⁴¹ Chamber of Trade (2008: 7).

these goals, it is necessary to facilitate the admission of highly qualified workers and their families by establishing a fast-track admission procedure [...].²⁴²

In effect, the Law of 29 August 2008 on Free Movement of Persons and Immigration grants highly qualified third-country nationals more favourable conditions than salaried workers in terms of admission requirements and procedures, access to the labour market, validity period of the residence permit, and other associated rights. In contrast to regular migrants (see section 2.2.2), the Blue Card Directive provides that highly qualified migrants are allowed to cumulate periods of residence in different Member States in order to fulfil the requirement of five years concerning the duration of residence for the EC long-term residence status. They must have only stayed two years immediately prior to the submission of the application as an EU Blue Card holder within the territory of the Member State where the application for the long-term resident's EC residence permit is lodged (Article 16 Section 2 of Directive 2009/50/EC). By deliberately favouring highly qualified migrants through the new immigration legislation, it has been argued that Luxembourg seemingly strives for a selective immigration policy (*politique d'immigration choisie*).²⁴³ The aforementioned legal provisions, however, are geared rather towards the long-term than temporary stay of highly qualified third-country nationals in Luxembourg, although they may eventually engage in spontaneous circular migration or return to their country of origin temporarily. In fact, the issue of brain drain in the context of highly qualified migrants has not been addressed in any of the public documents on the bill and opinions but only with reference to international students (see Section 2.2.1.8).

2.2.1.4 Intra-Corporate Transferee

According to Article 47 Section 1 of the Law of 29 August 2008, an authorization to stay (*autorisation de séjour*) may be granted, upon request from the host company, to a third-country national worker who is temporarily transferred (*travailleur salarié transféré*) to the Grand Duchy of Luxembourg in the context of a transfer between companies belonging to same social or economic entity such as defined by the Labour Code (*Code du Travail*). The host company must submit a request to the minister specifying the work to be carried out and

²⁴² Council Directive 2009/50/EC of 25 May 2009, point 7.

²⁴³ National Council for Foreigners (2008: 2).

the duration of the transfer (Article 47 Section 2). The employee in question must have a permanent work contract with the sending company carrying out the transfer (Article 47 Section 3). He or she will be issued a residence permit for intra-corporate transferees (*titre de séjour pour travailleur salarié transféré*) that is valid for a maximum period of one year. It is renewable, upon request, for the same period of validity as long as the requirements for obtaining it are still being met (Article 47 Section 4). The salaried activity carried out by virtue of an authorization of transfer does not confer the right to obtain a residence permit as salaried worker (*titre de séjour pour travailleur salarié*) (Article 47 Section 5). In other words, it is not possible for intra-corporate transferees to change their immigration status and solidify their residence status. They are also not eligible to apply for long-term residence status (*statut de longue durée*) irrespective of their length of stay in the country (Article 80 Section 2d).

2.2.1.5 Posted Worker

Article L. 141-1 Section 3 of the Labour Code (*Code de Travail*), as amended by Article 2 Point 3 of the Law of 11 April 2010, defines a posted worker (*travailleur détaché*) as a salaried employee who normally works abroad and carries out his or her work in the territory of the Grand Duchy of Luxembourg for a specified limited period of time that is determined by the provision of services for which a contract has been concluded. The posting must relate to a particular purpose or activity that is temporarily limited and ending with the completion of the subject matter of the contract (Art. L-141-1 Section 2 as amended by Article 2 Point 2 of the Law of 11 April 2010).

Article 48 Section 1 of the Law of 29 August 2008 stipulates that an authorization to stay (*autorisation de séjour*) may be granted to third-country national workers who are temporarily posted to Luxembourg within the framework of a transnational provision of services. The posting company must submit a request to obtain an authorization of posting (*autorisation de détachement*), specifying the workers to be posted, the nature and period of the work and the exceptional circumstances that allow to admit that the national labour market is not affected (Article 48 Section 2). Furthermore, the respective workers must have a permanent work contract with the sending company provided that the beginning of this contract dates back to a minimum of six months before the posting to Luxembourg (Article 48 Section 4). If these

conditions are met, an authorization of posting will be issued for the period scheduled for the provision of services. This authorization can be extended in exceptional circumstances if the provision of services could not be completed within the envisaged period. In this case, the minister can submit a request for prolongation of the authorization of posting to the advisory commission for salaried workers (*commission consultative pour travailleurs salariés*) (Article 48 Section 3).

The third-country national authorized to stay in Luxembourg on the basis of these provisions will be granted a resident permit for posted workers (*titre de séjour pour travailleur salarié détaché*) for a period of validity that does not exceed the duration of the authorized posting (Article 48 Section 5). Like in the case of intra-corporate transferees, the salaried activity carried out by virtue of an authorization of posting does not confer the right to obtain a residence permit as salaried worker (*titre de séjour pour travailleur salarié*) (Article 47 Section 6). Third-country national posted workers are also not eligible to apply for long-term residence status (*statut de longue durée*) irrespective of their length of stay in the country (Article 80 Section 2d).

A company that is located in another EU Member State, in a State that is a contracting party to the European Economic Area Agreement or in Switzerland can freely post its salaried workers to the territory of Luxembourg for a period of less than three months, irrespective of the nationality of the posted workers, if these enjoy the right to reside and work in the State in which the company is located (Article 49 Section 1).

In the case of a provision of services of more than three months, the salaried worker has the full right to a residence permit for community service providers (*titre de séjour pour travailleur salarié d'un prestataire de services communautaire*) containing the name and corporate name of the provider and recipient of the service in the Grand Duchy of Luxembourg (Article 49 Section 3).

As will be presented in more detail in the data section, only 50 of the 13 985 workers posted to Luxembourg in 2010 were third-country nationals.²⁴⁴ Almost 90 per cent of the posting companies in 2010 were based in the neighbouring countries Belgium, France and Germany.

2.2.1.6 Sports person

Third-country nationals who wish to practice in Luxembourg an athletic or coaching activity for a period of more than three months are granted an authorization to stay for sportspersons (*autorisation de séjour pour sportif*) by the minister exclusively for that activity if the athlete or coach has concluded a contract with an accredited federation or an affiliated club, the remuneration equals at least the current social minimum wage for a full-time job and the applicant has health insurance coverage (Article 54 Section 1 of the Law of 29 August 2008). If they are authorized to stay in Luxembourg as a sportsperson, third-country nationals will be issued a residence permit for sportspersons (*titre de séjour pour sportif*) if they have provided proof of appropriate accommodation. This permit is valid for up to one year (Article 54 Section 2). It can be renewed, upon request, for the same period of validity as long as the conditions for qualifying are still being met (Article 54 Section 3). While the Luxembourg Olympic and Sporting Committee (COSL), in their opinion on the bill concerning the free movement of persons and immigration, welcomed the introduction of a separate category of residence permit for third-country national sportspersons, they also pointed out that those athletes and coaches who do not meet the conditions laid out in Article 54 have to apply for an authorization to stay as salaried worker (*autorisation de séjour pour travailleur salarié*) if they want to exercise their profession in Luxembourg. This is of importance in the case of non-EU sportspersons who do not earn the social minimum wage with their sport and are thus obliged to take on a second job in order to make a living.²⁴⁵

Third-country national athletes staying in Luxembourg for a period of less than three months per calendar year are not obliged to obtain a specific authorization to practise their sport, whether remunerated or not (Article 35 Section 2 of the Law of 29 August 2008). However,

²⁴⁴ Personal communication with the Labour Inspectorate (ITM), 25 February 2011. No distinction is made between posted workers and intra-corporate transferees in the ITM data. Therefore, the total number include both types of workers.

²⁴⁵ Luxembourg Olympic and Sporting Committee (2008: 3).

contrary to the provisions of Article 54, that apply to athletes and coaches alike, no explicit reference is made to trainers in Article 35 Section 2, an exclusion that has been criticized by the Luxembourg Olympic and Sporting Committee.²⁴⁶

2.2.1.7 Student, Trainee and Volunteer

Student

An authorization to stay for students (*autorisation de séjour pour étudiant*) is issued to third-country nationals who have been admitted to an accredited higher education institution in Luxembourg in order to follow a full-time education programme leading to a higher education degree awarded by that institution. Applicants must provide proof that they have sufficient financial resources at their disposal for the duration of their stay and the cost of their return trip and that they carry health insurance coverage. In case the applicant is a minor, he or she also needs to provide a parental authorization (Article 56 of the Law of 29 August 2008). Within three months of their arrival, third-country national students will be issued a resident permit for students (*titre de séjour pour étudiant*) that is valid for a minimum of one year and, upon request, renewable for the same period of validity as long as the conditions for qualifying are still being met (Article 57 Section 1). If the education programme is shorter than one year, the validity of the residence permit covers the period of studies in Luxembourg (Article 57 Section 2).

Article 57 Section 3 regulates to what extent third-country national students may engage in remunerated activities besides their studies and differentiates between those students who are enrolled in a Master's or doctoral programme and those who are following a programme leading to an advanced vocational diploma as qualified technician (*brevet de technicien supérieur*) or a Bachelor's degree. During the lecture period, the latter are only allowed to work for a maximum of ten working hours per week over a period of one month and only after having completed the two first semesters of their programme, unless they obtain a position at the institution where they are inscribed. Postgraduate students, on the other hand, only have to respect the limitation of working hours. This restriction, however, does not apply to jobs taken during the semester break or research work of PhD students at a higher

²⁴⁶ Luxembourg Olympic and Sporting Committee (2008: 2).

education institution or an accredited research institute. Students are neither obliged to obtain a work permit nor to pass a labour market test.

The restriction of the number of working hours for students has been introduced by the Government to protect the primary objective of their stay and to prevent that the student status is being abused by third-country nationals wishing to exercise a professional activity.²⁴⁷ However, this restriction has received widespread criticism from different national stakeholders in the course of the legislative process²⁴⁸. It has been argued that the provisions would discriminate against third-country national students in light of the conditions for EU citizen students who constitute the majority of students at the University of Luxembourg, have on average more financial resources and are not subject to any restrictions. The provisions would thus potentially widen the social divide and intensify the social selection. Furthermore, restricting the number of working hours also affects the type of jobs that students can take on and the earnings they will have at their disposal to cover their living expenses. Students themselves should be in the position to judge and balance their study and job workload. The study workload differs between the various academic disciplines, the respective academic year, and the student's academic performance. Proposals included rising the permissible working time to 10 hours per week during the first year and 20 hours per week during the following years²⁴⁹, 20 hours per week from the first semester on²⁵⁰, to 40 hours week²⁵¹ and unlimited access from the onset²⁵². None of these proposals have been accepted in the draft bill.

After successful completion of the education programme and obtainment of a higher education degree in Luxembourg, an authorization to stay as salaried worker (*autorisation de séjour pour travailleur salarié*), valid for a maximum period of two years and non-renewable, can be issued to third-country nationals who wish, with the view to return to his or her country of origin, to complement his/her academic studies with a first-time work experience. This professional activity needs to serve the economic interest of the Grand Duchy of

²⁴⁷ Chamber of Deputies of the Grand Duchy of Luxembourg (2007: 71).

²⁴⁸ ASTI *et al.* (2008: 8p.), Chamber of Commerce (2008: 11pp.), Chamber of Labour (2008: 16p.), National Council for Foreigners (2008: 4).

²⁴⁹ National Council for Foreigners (2008: 4).

²⁵⁰ ASTI *et al.* (2008: 9).

²⁵¹ Chamber of Commerce (2008: 12p.).

²⁵² Chamber of Labour (2008: 17).

Luxembourg and the country of origin and has to be directly related to the academic education of the applicant (Article 59). During the legislative process of the bill, the Government argued that the two-year limitation aims to counteract ‘brain drain’ and thus promotes the application of the acquired qualifications in the country of origin.²⁵³

It should be noted that third-country national graduate students need to be in possession of a work contract before his or her resident permit for study purposes expires. In accordance with Article 42 Section 1 Point 4 of the Law of 29 August 2008, the vacancy must have been declared to the National Employment Office (ADEM) and a labour market test must have been conducted, i.e. no equally qualified national or EU citizen was available to fill the position. The current national legislation does not allow third-country national university graduates to stay in the territory of Luxembourg in order to search for work after the expiration of their residence permit for study purposes.

Those third-country nationals who have stayed in Luxembourg on the basis of a residence permit for students (*titre de séjour pour étudiants*) and have subsequently been granted a residence permit for salaried workers (*titre de séjour pour travailleur salarié*) under the provisions of Article 59 are not eligible to apply for the status as long-term resident (*résident de longue durée*), irrespective of the length of their stay even. This is because their stay is considered temporary by definition (Article 80 Section 2). However, should third-country nationals have obtained a residence permit that allows them to apply for long-term residence status, the period spent in Luxembourg as university student or trainee will be taken into account by fifty percent (Article 80 Section 3).

Trainee

An authorization to stay for trainees (*autorisation de séjour du stagiaire*) can be issued to third-country nationals coming to Luxembourg in order to absolve an unremunerated traineeship (Article 61 of the Law of 29 August 2008). Applicants need to prove that the traineeship is a compulsory part of their secondary education or higher education programme, provide a signed traineeship contract and present proof of health insurance coverage and

²⁵³ Chamber of Deputies of the Grand Duchy of Luxembourg (2007: 72).

sufficient means to cover their costs of their stay and return. If applicants are below the age of 18, they need to provide a parental authorization (Article 61 Section 1). The resident permit for trainees (*titre de séjour du stagiaire*) is valid for the duration of the traineeship but must not exceed one year. Only in exceptional cases and as long as the relevant conditions are fulfilled can the Minister of Labour, Employment and Immigration renew the document once and only for duration necessary to obtain a professional qualification recognized in the Grand Duchy of Luxembourg (Article 61 Section 2).

2.2.1.8 Researcher

The Law of 29 August 2008 on Free Movement of Persons and Immigration introduced a specific authorization to stay for researchers (*autorisation de séjour du chercheur*). It can be issued on request to third-country nationals who are in possession of a higher education diploma giving them access to doctoral studies and who have signed a hosting agreement with an accredited research institute in Luxembourg (Article 63). By signing the hosting agreement, the hosting institute commits itself to act as guarantor to cover all costs related to the stay and return of the respective researcher. This commitment ends two months after the expiration of the hosting agreement (Article 66).

Third-country nationals pursuing a doctoral degree do not qualify for this type of residence document but fall under the provisions of Article 56 concerning a residence permit for study purposes. The same applies to third-country national visiting researchers working for a research institute in another EU Member State and posted to a research institute in Luxembourg (Article 63). Within three months of their arrival, researchers are issued a residence permit for researchers (*titre de séjour pour chercheur*), which is valid for one year or for the duration of the research project, and can be renewed as long as the relevant conditions for are fulfilled (Article 64 Section 2).

Third-country national researchers who are authorized to stay as researcher in another EU Member State are allowed to conduct part of their research in the Grand Duchy of Luxembourg provided that a hosting agreement has been signed in the other Member State, their stay does not exceed a maximum period three months, they have sufficient resources to

cover then costs of their stay and return and that they do not pose an immediate threat to public order, security or health (Article 67 Section 1). If the stay exceeds the three months, third-country national researchers have to fulfill the conditions set out in Article 63 Section 1 and sign a new hosting agreement for his research activity in Luxembourg (Article 67 Section 2).

Like intra-corporate transferees and highly qualified migrants, researchers are allowed to immediately bring their family members on arrival if they have stable and sufficient resources, appropriate accommodation and health insurance coverage for themselves and their family members (Article 71 in conjunction with Article 69).

2.2.2 Long-Term Resident Status for Third-Country Nationals

The Law of 29 August 2008 on Free Movement of Persons and Immigration transposed Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. As stated in Article 1, the Directive determines a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and b) the terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status.

Accordingly, non-EU citizens who have resided legally and continuously in Luxembourg for at least five years and meet a number of other conditions, such as stable and regular resources, appropriate accommodation, and health insurance coverage, can apply for the status as long-term resident (Article 80 Section 1 and Article 81 of the Law of 29 August 2008). However, Article 80 Section 2 of the Law of 29 August 2008 explicitly restricts the access to long-term residence²⁵⁴ in that several categories of third-country nationals do not qualify for this status ‘due to the temporary nature of their stay or in light of their uncertain situation’²⁵⁵, irrespective of the actual length of their stay in the country. This includes a) diplomatic staff and employees of international organizations; b) refugees or persons who have applied for

²⁵⁴ British Council and Migration Policy Group (2011).

²⁵⁵ Chamber of Deputies of the Grand Duchy of Luxembourg (2007: 77).

recognition as refugees and whose application has not yet given rise to a final decision; c) persons who are authorized to reside in Luxembourg on the basis of a subsidiary or temporary form of protection or have applied for authorization to reside on that basis and are awaiting a decision on their status; d) persons who reside in Luxembourg solely on temporary grounds such as seasonal workers, posted workers and intra-corporate transferees or in cases where their residence permit has been formally limited; and e) students and trainees.

The status as long-term resident is permanent (Article 82 Section 3). The permit is valid for five years and will, upon application, automatically be renewed on expiry (Article 82 Section 2). However, if holders of a long-term residence status return to their home country or any other country outside of the European Union and remain there for a period of twelve consecutive months or longer, they are no longer entitled to maintain their long-term resident status except when they are absent for important reasons such as pregnancy, childbirth, a serious illness, studies or vocational training (Article 83 Section 1b in conjunction with Article 80 Section 5). Yet, previous holders of a long-term resident permit benefit from a facilitated procedure for the re-acquisition of long-term resident status (Article 83 Section 3). In comparison, non-nationals who hold a regular residence permit (*titre de séjour*) and intend to leave Luxembourg for a period of more than six months are obliged to return their residence permit to the Ministry of Foreign Affairs and deregister from the local authority where they resided (Article 40 Section 4).

The Law of 29 August 2008 on Free Movement of Persons and Immigration also transposed the provisions of the Council Directive 2003/109/EC on the residence in other EU Member States (Chapter 3, Articles 14-23). Accordingly, a person holding long-term residence status in another Member State acquires the right to reside in Luxembourg for a period exceeding three months if he or she wants to exercise an economic activity in an employed or self-employed capacity; pursue studies or vocational training; or for other purposes (Article 85 Section 1 of the Law of 29 August 2008). This provision, however, does not concern the residence of long-term residents in the territory of Luxembourg as employed workers posted by a service provider for the purposes of cross-border provision of services and as providers of cross-border services (Article 85 Section 3). In order to be allowed to stay in Luxembourg, long-term residents of another Member State are required to submit an application for an authorization to stay (*autorisation de séjour*) to the Ministry of Foreign Affairs and provide

evidence that they have stable and regular resources, health insurance and do not constitute a threat to public policy or public security (Article 86). Subsequently, they will be provided with a residence permit (*titre de séjour*) which is valid for five years and renewable upon request (Article 87 in conjunction with Article 18 of the Grand-Ducal Regulation of 5 September 2008). Third-country nationals who have obtained their long-term residence status in Luxembourg and choose to live in a second Member State, however, lose their status in case of an absence from the territory of Luxembourg of six years or longer (Article 83 Section 1c).

The available administrative records are not suitable to provide information about the proportion of third-country nationals who have moved to another Member State after obtaining their long-term resident status from the Luxembourg authorities. Similarly, there is no hard evidence which would suggest that a proportion of third-country nationals prefer moving to other Member States instead. Some indication might be drawn from a representative survey²⁵⁶ conducted among national and non-national residents in 2009. Accordingly, Luxembourg is considered as the preferred country of residence by 77 percent of the non-nationals living in the country. Disaggregated by current nationality, Luxembourg is not the first choice country for 25 percent of the respondents holding a nationality other than the German, Belgian, French, Italian or Portuguese one. Almost one-fifth (19 percent) of the respondents in this unspecified ‘other nationalities’ category prefer to live in an unspecified country other than Belgium (1 percent), France (2 percent), Germany (2 percent), Portugal (1 percent), or Italy, the Netherlands or the United Kingdom (0 percent). However, given the unspecified nature of the ‘other’ categories, it is not possible to say whether they refer to third-country nationals and non-EU countries. In light of the overwhelmingly European character of immigration to Luxembourg²⁵⁷, the proportion of third-country national respondents in the representative sample was supposedly small.

The outline above shows that third-country nationals gain better rights through obtaining long-term resident status. However, fewer persons can apply as a number of categories of migrants are not eligible to apply for this status, irrespective of the actual length of their stay in Luxembourg. Refugees and other persons enjoying international protection, temporary

²⁵⁶ TNS ILRES (2009).

²⁵⁷ Thill-Ditsch (2010).

migrants and students are denied access to permanent residence²⁵⁸ and as such a secure enough legal status to enable ‘spontaneous’ circular migration. However, on 11 April 2011, the European Council adopted an extension of the EU rules on long term residents amending Directive 2003/109/EC. As a consequence, refugees and beneficiaries of subsidiary protection will be able to acquire long-term resident status on a similar basis as other third-country nationals legally living in the EU for more than five years. Luxembourg, just as other Member States who take part in the application, will have to comply with the new rules within two years. Furthermore, it might be argued that the provision on the loss of long-term resident status after an absence from the territory of the European Union of twelve consecutive months is not flexible enough and rather discourages long-term migrants to return temporarily to their country of origin or another third country.

2.2.3 Plural Nationality

The Law of 23 October 2008 on Luxembourg Nationality, which took effect on 1 January 2009, constituted a significant reform of the naturalization process with regard to the conditions to be met, the application procedure and the appeal procedures.²⁵⁹ The main new elements include a) the principle of plural nationality²⁶⁰; b) the extension of the compulsory minimum period of residence in the country from 5 to 7 years; c) the proof of Luxembourgish language skills; d) the obligation to follow citizenship courses; e) the conditions of good repute; f) the creation of an administrative procedure aimed at simplifying and accelerating the processing of naturalization applications; and g) the creation of appeal procedures against a refusal of naturalization before the first instance Administrative Court (*Tribunal administratif*), with the possibility of lodging an appeal before the second instance Administrative Court (*Cour administrative*).

Considering that more than four out of ten persons living in Luxembourg do not hold the Luxembourg nationality and acknowledging that many of the immigrants who intend to reside

²⁵⁸ British Council and Migration Policy Group (2011).

²⁵⁹ The subsequent explanations are based on Government of Luxembourg (2009).

²⁶⁰ Plural or multiple citizenship is defined as the simultaneous possession of two or more citizenships by the same person, EMN Asylum and Migration Glossary, <http://emn.intrasoft-intl.com/Glossary/index.do>

in Luxembourg permanently wish to preserve their present citizenship²⁶¹, the Government sought to reinforce the social cohesion and strengthen the integration of non-national residents by introducing the principle of plural nationality into Luxembourg law. At the same time, the new legislation aimed at enabling Luxembourg nationals abroad to obtain the nationality of their country of residence without the need to renounce their Luxembourg nationality.²⁶² In contrast to the provisions of the previous amended Law of 22 February 1968 on Luxembourg Nationality (Article 7 Section 2), the Law of 23 October 2008 on Luxembourg Nationality does not include the condition of the loss or renunciation of the nationality of origin upon the initiative of the foreigner wishing to acquire Luxembourg nationality. However, if the legislation of the country of current citizenship of the migrant does not allow dual or plural citizenship, the acquisition of Luxembourg nationality cannot be combined with keeping the foreign nationality.

Multiple citizenship is usually considered conducive to ‘spontaneous’ circular migration as it enables permanent migrants to maintain substantial personal and political attachments to both the country/ies of origin and destination and, given their legal security, allows for repetitive back-and-forth mobility. EU citizenship and the freedom of movement of EU citizens within the territory of the Member States is ‘probably the most typical example where circularity is embedded in the consolidation of a regional bloc’²⁶³. The overall low level of intra-EU mobility, however, suggests that the right to move and reside freely within the EU alone does not suffice.²⁶⁴

²⁶¹ According to the representative survey conducted by TNS ILRES in 2009, 56 percent of the non-national respondents indicated that they wish to adopt the Luxembourg nationality. Of those, 82 percent intend to keep their current nationality. The main reasons (multiple answers allowed) for the desire to naturalize were better integration (75 percent), access to political participation (68 percent), emotional considerations (51 percent), professional reasons (45 percent), automatic naturalization of children (26 percent), and other reasons (18 percent). However, the published results are not disaggregated by nationality and thus do not allow to compare the motivation of persons of different nationalities. Third-country nationals arguably constituted only a small proportion of the non-national survey sample as a result of which the survey does not shed much light on their motivations. Given that third-country nationals without long-term residence status do not enjoy the same rights as EU citizens, the wish to adopt the Luxembourg nationality might be owed more to a pragmatic attitude (e.g., right of abode in Luxembourg, unrestricted access to the internal labour market, less administrative barriers, less travel restrictions and benefits of freedom of movement within the European Union) than be an act of volition of immigrants concerning their level of integration. This explanation is corroborated by the fact that third-country nationals are overrepresented among the naturalized citizens compared to their distribution in the population (see Ministry of Justice, http://www.mj.public.lu/chiffres_cles/index.html)

²⁶² Chamber of Deputies of the Grand Duchy of Luxembourg (2006 : 9), see also Biltgen (2009).

²⁶³ Cassarino (2009: 3).

²⁶⁴ PIONEUR (2006), Favell (2008).

The number of foreign residents who acquired the Luxembourg nationality had increased continuously since the mid-90s²⁶⁵, particularly following the relaxation of the naturalization procedure through the Law of 24 July 2001 that came into effect on 1 January 2002. It was only in 2001 when their number dropped by one-third, mainly due to the wariness of potential applicants in light of the upcoming amendment of the nationality law. The same situation was observed in 2008, during which the number of persons having acquired the Luxembourg nationality decreased marginally by 2 % due to the imminent reform of the nationality law. The law was drawn up in its initial form in October 2006. It was subsequently amended on two occasions in 2007 and 2008 prior to its final adoption in Mid-October 2008. The legislative process had received widespread media attention and entailed a fervid discussion among political and civil society actors.

It therefore came as no surprise that the number of adult persons who acquired the Luxembourg nationality increased from 1 222 persons in 2008 to 4 022 persons in 2009²⁶⁶. In addition, 1 335 under-age children obtained automatically the Luxembourg nationality upon the naturalization of one of their parents in 2009. The new legislation also accepted *ius soli*²⁶⁷ for the third generation (Article 1 Section 5). Accordingly, a child obtains the status of a Luxembourg national by origin if a) he or she is born in Luxembourg to non-Luxembourg parents, and b) at least one of his or her parents (father or mother) was also born in Luxembourg. This provision applies to a child a) who is born after the new citizenship law entered into force, i.e. after 1 January 2009, or b) who had not yet reached 18 years of age on 1 January 2009, thus children born between 1 January 1991 and 31 December 2008. 4 209 persons received the Luxembourg nationality in this way in 2009. One consequence of the strong increase in the number of persons acquiring the Luxembourg nationality was that the national population increased considerably in absolute numbers in Luxembourg for the first time since several years despite a negative natural growth rate and a negative migration balance. Correspondingly, the proportion of non-nationals among the total population

²⁶⁵ http://www.mj.public.lu/chiffres_cles/index.html

²⁶⁶ This figure includes persons who a) recovered their initial Luxembourg citizenship after they had lost their citizenship because they acquired a foreign citizenship (Article 14 of Law of 23 October 2008); b) whose lineal ancestors were Luxembourgers on 1 January 1900 and recovered their ancestors' Luxembourg citizenship (Article 29); and d) women who lost their Luxembourg citizenship to acquire another nationality by way of marriage or via their husband's acquisition of a foreign nationality (Article 31).

²⁶⁷ *Ius soli* refers to the principle that the nationality of a person is determined on the basis of his or her country of birth, EMN Asylum and Migration Glossary, <http://emn.intrasoft-intl.com/Glossary/index.do>

declined for the first time since the Second World War, dropping from 43.7% on 1 January 2009 to 42.9% on 1 January 2010.²⁶⁸ This trend continued in 2010. The number of adult persons who acquired the Luxembourg nationality through an administrative or legislative procedure in 2010 increased from 4 022 to 4 311.²⁶⁹

Table 5. Development of acquisition of nationality by procedure since 1999

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Naturalization	253	224	207	356	344	341	366	343	484	496	3 475	4 125
Option	296	460	289	398	441	500	588	785	752	719	479	50
Reinstatement	14	16	11	11	7	9	12	10	6	7	68	136
Total	563	700	507	765	792	850	966	1 138	1 242	1 222	4 022	4 311

Source: Ministry of Justice/Office in charge of Luxembourg Nationality and STATEC

Note: The figures do not include the number of under-age children who automatically received the Luxembourg nationality upon the acquisition of the Luxembourg nationality of one of their parents and persons who are Luxembourg nationals by origin because they were born in Luxembourg to a foreign parent that was born himself or herself in Luxembourg. Furthermore, the figures by procedure refer to the legislation effective in the respective year. As of 1 January 2009, figures on naturalization refer to Article 6, 7 and 10 and figures on reinstatement to Article 14, 29 and 31 of the Law of 23 October 2008. According to Article IV Section 3 and 4 of the Law of 23 October 2008, applications for naturalization, option and reinstatement which have been submitted before the Law of 23 October 2008 entered into force were subject to the previous legislation. This concerned 436 naturalizations in 2009 and 41 in 2010, 479 options in 2009 and 50 in 2010 but no case of reinstatement. They are included in the figures above.

The main countries of citizenship of new Luxembourg nationals at the time of their application largely reflect the main countries of citizenship of the non-national population in Luxembourg. The largest group were Portuguese nationals (30.9% of the total number of acquisitions of Luxembourg nationality by procedure in 2009 and 31.3% in 2010), followed by Italians (9% and 15.4% respectively), French (6.9% and 7.9% respectively), Germans (8.0% and 7.7% respectively) and Belgians (5.6% and 6.0% respectively).

Given the large increase in the number of EU-citizens opting for Luxembourg nationality, the proportion of third-country nationals among the naturalized immigrants dropped from 41.4%

²⁶⁸ Thill-Ditsch (2010).

²⁶⁹ These figures do not include under-age children who obtained the Luxembourg nationality automatically upon the naturalization of one of their parents and persons who are Luxembourg nationals by origin because they were born in Luxembourg to a foreign parent that was born him/herself in Luxembourg.

http://www.mj.public.lu/chiffres_cles/ind_stat_2010.pdf

(=506 persons) in 2008 to 33.6% (=1 352 persons) in 2009 and sunk again to 25.4% (=1 096 persons) in 2010. The main countries of naturalized immigrants from outside the EU were Montenegro (4.4% of the total number of acquisitions of Luxembourg nationality by procedure in 2009 and 5.1% in 2010), Bosnia-Herzegovina (6.7% and 4.7% respectively) and Serbia (6.2% and 4.5% respectively).

Table 6. Main countries of citizenship of naturalized immigrants at the time of application for Luxembourg nationality, 2008-2010

Country of citizenship at time of application	2008	2009	2010
Portugal	293	1 242	1 351
Italy	114	362	665
Germany	76	322	333
France	76	277	342
Belgium	80	224	258
Bosnia-Herzegovina	76	270	202
Serbia	81 ²⁷⁰	249	194
Montenegro	24	138	218
Cape Verde	49	77	40
Kosovo	n/a	77	61
Other	353	784	647
TOTAL	1 222	4 022	4 311

Source: Ministry of Justice/Office in charge of Luxembourg Nationality and STATEC

Article 7 Section 1b of the Law of 23 October 2008 sets out the language requirements for individuals who want to acquire the Luxembourg nationality by way of naturalization. Correspondingly, candidates must have sufficient active and passive knowledge of at least one of the three official languages (French, German and Luxembourgish). This is usually checked by the civil servants of the Ministry of Justice upon the submission of the application for naturalization. In case of doubt, the civil servants ask the applicant to come again and carry out another language test.²⁷¹ In addition, candidates for naturalization must have passed a centralized language exam (*Sproochentest Lëtzebuergesch*) that confirms that their language proficiency of spoken Luxembourgish corresponds to level B1 of the Common European Framework of Reference for Languages for oral understanding and A2 for oral expression. The attendance of a Luxembourgish language course prior to the test is optional. Critical voices are worried that the Luxembourgish language requirement may be too limited in scope

²⁷⁰ Former Serbia and Montenegro including Kosovo.

²⁷¹ Biltgen (8 March 2011).

for many applicants who actively participate in the country's plural and multilingual society and the requested level too high.²⁷²

However, persons who have attended a public school in Luxembourg for at least seven years or a private school which follows the curricula of public schools, and persons who have resided legally and continuously in Luxembourg since before 31 December 1984 are exempted from the requirement to pass a language test of spoken Luxembourgish as well as from the obligation to attend at least three civic education courses before submitting a request for naturalization (Article 7 Section 2). Figures for the period from October 2009 to December 2010 show that 84.7% of the persons whose application for Luxembourg nationality was approved on the basis of Articles 6, 7 and 10 of the Law of 23 October 2008 (naturalization) had been exempted from the Luxembourg language and civic education requirement because they either had resided in Luxembourg before 31 December 1984 (42.4%), or they had received that the majority of their education in Luxembourg (57.6%).²⁷³ Thus, the overwhelming majority of the new naturalized citizens were long-term immigrants and their offspring, so-called second generation immigrants. 809 of the 1 030 individuals (79%) who took the centralized Luxembourgish language exam at the National Language Institute (*Institute National des Langues*)²⁷⁴ in 2010 passed the test.²⁷⁵

There are no administrative records on the number of dual or multiple citizens and persons who have acquired or recovered the Luxembourg nationality without keeping their previous citizenship. Following the general implementation of the principle of plural citizenship, the original citizenship of the applicant for naturalization is not checked. Accordingly, any person possessing one or several other nationalities in addition to the Luxembourg nationality is considered by the authorities of the Grand Duchy as being exclusively Luxembourgish. In the case of the loss of the previous citizenship, the Ministry of Justice is neither informed by the respective person nor by the responsible authorities of the country concerned. The census conducted in February/March 2011²⁷⁶, however, contained a question on multiple citizenship

²⁷² British Council and Migration Policy Group (2011).

²⁷³ Biltgen (8 March 2011).

²⁷⁴ <http://www.insl.lu/>

²⁷⁵ Data provided by the National Language Institute upon request, March 2011.

²⁷⁶ <http://www.statistiques.public.lu/fr/enquetes/espace-menages/recensement/index.html>

and will serve as an indicator for the number of persons who hold one or more citizenships in addition to the Luxembourg nationality.²⁷⁷

2.2.4 Portability of Social Security Benefits

International portability of social security benefits allows international migrants, who have contributed to a social security scheme for some time in the destination country, to maintain and transfer their acquired social security rights when moving to their home or another country. If this is not guaranteed, migrants will be reluctant to return to their country of origin, or for that matter to any other country, on a temporary or permanent basis as they run the risk of ‘effectively forfeit[ing] whatever contributions [they made] to the social security institution on account of their membership, together with other benefits that are anchored on these contributions’²⁷⁸.

Council Regulation 1408/71 on the application of social security schemes within the Community guaranteed equal treatment and social security benefits to all workers who are Member State nationals, regardless of their place of employment or residence. The provisions of the Regulation applied to all the traditional branches of social security, i.e. sickness, maternity, accidents at work, occupational diseases, invalidity benefits, unemployment benefits, family benefits, retirement and pre-retirement benefits, and death grants. It has been replaced by Council Regulation 883/2004 of 24 April 2004 on the coordination of social security systems and its implementation regulation. Council Regulation 987/2009/EC of 16 September 2009 came into effect on 1 May 2010 and aims to simplify and clarify the Community rules on the coordination of Member States’ social security systems. By, for instance, recognizing that the acquisition of the right to benefits in one State must take account of periods of insurance, employment, self-employment or residence in another EU Member State (principle of the aggregation of periods), the Regulation aims to guarantee the right of free movement of persons in the EU.²⁷⁹ Social security agreements between Member States concluded before the Regulation took effect remain applicable only where the

²⁷⁷ Biltgen (8 March 2011).

²⁷⁸ Cruz (2004: 3).

²⁷⁹ http://europa.eu/legislation_summaries/employment_and_social_policy/social_protection/c10521_en.htm

provisions of the former are more favorable for the person concerned. Luxembourg concluded three bilateral agreements with France, Belgium and Portugal containing provisions that accord more rights than those provided in the Regulation 883/2004 or which govern specific situations.²⁸⁰ In summary, EU citizens and nationals of the Member States of the European Free Trade Association²⁸¹, who constitute the vast majority of non-national residents in Luxembourg, enjoy the portability of their social security benefits within the EU and EFTA Member States.

Third-country nationals who legally reside within the Community and meet the other requirements of Council Regulation 859/2003/EC of 14 May 2003 have the right to social security benefits when they move to another Member State in order to stay, live or work there. However, if third-country nationals return to their country of citizenship or move to another non-EU country, the portability of their social security benefits must be established through bilateral or multilateral social security agreements between the respective States. Luxembourg currently has bilateral arrangements with the following third countries: Brazil, Canada, Cape Verde, Chile, Croatia, Macedonia, Montenegro, Quebec, Serbia, Tunisia, Turkey, and the United States of America. The bilateral agreement with Former Yugoslavia, which entered into force in June 1956, is still applicable to Macedonia and Bosnia and Herzegovina awaiting the conclusion of a new bilateral agreement. Luxembourg has ratified an agreement with Morocco. Until the ratification by Morocco, the social security relationships between the two countries are not regulated.²⁸² In addition, negotiations are currently proceeding with India, Brazil, Argentina and Japan on the conclusion of bilateral agreements.²⁸³ All these agreements are governed by the principles of equality of treatment, the addition of insurance periods and

²⁸⁰ This concerns a) the agreement with Belgium of 24 March 1994 on the social security of cross-border workers; b) the agreement with France of 7 November 2005 on specific provisions regarding social security; and c) the agreement with Portugal of 10 March 1997 on the recognition of invalidity.

http://www.mss.public.lu/international/conventions_bilaterales/index.html

²⁸¹ The European Free Trade Association (EFTA) is an intergovernmental organization set up for the promotion of free trade and economic integration to the benefit of its four Member States Iceland, Liechtenstein, Norway and Switzerland. The former three EFTA countries are signatories to the the Agreement on the European Economic Area (EEA), which entered into force on 1 January 1994. It brings them and the 27 EU Member States together in a single internal market and provides for the inclusion of EU legislation that covers the free movement of goods, services, persons and capital throughout the 30 EEA States. The Agreement guarantees equal rights and obligations within the Internal Market for citizens in the EEA. While Switzerland is not part of the EEA Agreement, it has a bilateral agreement on the Free Movement of Persons with the EU, which came into force on 1 June 2002. <http://www.efta.int/>

²⁸² General Inspectorate of Social Security (2010: 528).

²⁸³ http://www.mss.public.lu/international/conventions_bilaterales/index.html

the export of services. They are applicable to all persons moving between the respective two countries without distinction of nationality. The only exceptions are the agreements with Brazil, Cape Verde and Tunisia as they solely apply to the nationals of the contracting parties.²⁸⁴ Except for China, the international instruments thus apply to migrants from the main countries of citizenship of third-country nationals living in Luxembourg.²⁸⁵

2.3 Co-operation with Third Countries

The Government of Luxembourg signed several bilateral labour agreements between 1948 and 1970 in order to satisfy the country's labour needs.²⁸⁶ In doing so, it intentionally opted for the recruitment of foreign workers from countries that were ethnically and culturally similar, i.e. from Italy, the Netherlands and Portugal, and did not allow family reunification for migrant workers from Former Yugoslavia who were thought to not fit these criteria.²⁸⁷ Experience has shown that these movements led to considerable migration inflows over the following years and decades through chain migration and family reunification and in response to the weak economic situation and/or political instability in the countries of origin. This is seen particularly well in the case of migrants from Portugal and Former Yugoslavia. They nowadays constitute the largest group of non-nationals of EU and third-country origin respectively residing in Luxembourg. However, as in the case of regulated immigration from Italy in the 1950s, it has also become evident that labour migration flows can divert easily to other destination countries that offer better working conditions, higher salaries and less restrictive labour agreements, or when internal labour migration becomes a viable alternative to cross-border migration.²⁸⁸ Another important issue was – and will be for any potential future temporary or circular labour programme – the scarcity of appropriate and affordable accommodation for incoming migrant workers, particularly in urban centers.²⁸⁹

²⁸⁴ General Inspectorate of Social Security (2010: 528).

²⁸⁵ National Contact Point Luxembourg within the European Migration Network (2011a: 41/Table 6).

²⁸⁶ See Section 2.1 for a more detailed description.

²⁸⁷ Pauly (2010: 67-69).

²⁸⁸ Pauly (2010: 68).

²⁸⁹ Interview 1 (EMN study 'Satisfying Labour Demand through Migration'), 6 July 2010, with a representative of a Luxembourg trade union, page 15, line 40 – page 16, line 10.

In light of the establishment of the European Economic Community and the subsequent European integration process, the bilateral agreements with Italy, the Netherlands and Portugal became superfluous. The free movement of goods, capital, services, and people within the EU's Single Market²⁹⁰, in particular the right of EU citizens to move and reside freely within the Member States²⁹¹, made it possible to largely satisfy the country's structural labour shortage by reverting to a considerable number of EU citizens at all skill levels. They came to reside in Luxembourg either on a temporary or permanent basis or chose to commute daily between Belgium, France or Germany and the Grand Duchy. The large-scale recourse to foreign workers from other EU Member States helps to explain why there are currently no specific programmes put in place that regulate temporary or circular migration of third-country nationals.

Nonetheless, Luxembourg signed the Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde on 5 June 2008. This pilot Mobility Partnership is perceived as 'an open-ended, long-term framework based on political dialogue'²⁹² in which the participating Member States Spain, France, Luxembourg and Portugal on the one hand and Cape Verde on the other hand affirm the potential benefits of regulated (temporary and circular) migration for the country of origin, country of destination and migrants at the same time. Accordingly, the objectives of the Mobility Partnership are threefold: a) the facilitation of the movement of persons between the territories of Cape Verde and the participating EU Member States as well as legal migration, in particular circular and temporary migration; b) the development of a genuine cooperation on migration and development; and c) the prevention and combat of irregular immigration, smuggling of migrants and trafficking in human beings, including the promotion of an effective readmission and return policy.²⁹³

Luxembourg has put forward three proposals: a) to study the possibility of setting up an initiative on circular migration of temporary nature with Cape Verde; b) to develop and

²⁹⁰ http://ec.europa.eu/internal_market/index_en.htm

²⁹¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

²⁹² Point 14 (page 6) of the Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde of 21 May 2008.

²⁹³ Preamble (page 2) of the Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde of 21 May 2008.

strengthen the ‘Migrating with open eyes’ (*Migrer les yeux ouverts*) project which aims to familiarize future Cape Verdean migrants under family reunification with the social, linguistic and other realities of life in Luxembourg; and c) to offer twinning between partner universities.²⁹⁴

The motivation of the Government of Luxembourg to enter into a Mobility Partnership with Cape Verde may be explained by the following considerations²⁹⁵. There has been a strong migration from Cape Verde to Luxembourg in the last half-century²⁹⁶ and Cape Verdeans presently constitute, after immigrants from Former Yugoslavia, the second largest group of third-country nationals residing in Luxembourg²⁹⁷. This group, however, does not include persons of Cape Verdean origin who adopted the Portuguese or Luxembourg citizenship and individuals with plural nationality. Cape Verde is also one of the ten partner countries for development co-operation that the Government of Luxembourg has chosen to have privileged relations with.²⁹⁸ At the same time, it is the only of these privileged partner countries that has a sizable immigrant population in Luxembourg. In addition, both countries are similar in geographical size and population which may make such a partnership more feasible and manageable. Another aspect that was mentioned by the political representatives of both Luxembourg and Cape Verde during the semi structured interviews is the circumstance that a certain part of Cape Verdeans entering the territory of Luxembourg legally with a tourist visa stay beyond the allowed duration of their visa and then become migrants with an irregular status. By offering an alternative migration option, managed circular migration is perceived as one way to curb irregular migration in general and visa overstays in particular.²⁹⁹

While signatories to the joint declaration confirmed their intention to implement the proposed initiatives within the limits of their available financial means, the provisions are not designed

²⁹⁴ Proposals viii, ix and x (page 10) made in the Annex of proposed activities under section ‘Employment, management and facilitation of legal migration and integration’ of the Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde of 21 May 2008.

²⁹⁵ Interview 12 (EMN Study on ‘Satisfying Labour Demand through Migration’), 10 August 2010, with three representatives of the Government of Luxembourg, page 2, lines 46-50.

²⁹⁶ International Organization for Migration (2010).

²⁹⁷ National Contact Point Luxembourg within the European Migration Network (2011: 41/Table 6).

²⁹⁸ Lux-Development (2009).

²⁹⁹ Interview 12 (EMN Study ‘Satisfying Labour Demand through Migration’), 10 August 2010, with three representatives of the Government of Luxembourg, page 3, lines 4-11; and Interview 1 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political representative of Cape Verde, page 12, lines 1-16.

to create legal rights or obligations. In his response to a parliamentary inquiry of 13 October 2010³⁰⁰, Nicolas Schmit, the Minister of Labour, Employment and Immigration reported on the state of affairs and effects of the measures taken:

a) On 17 February 2009, the University of Luxembourg, on the initiative of the Government of Luxembourg, and the University of Cape Verde signed a Framework Agreement (*accord de coopération*)³⁰¹. The interuniversity cooperation aims at a) promoting the dialogue between the francophone and lusophone areas; b) developing the quality of teaching and research on Portuguese-speaking countries and the history, political institutions and society of Cape Verde; and at c) contributing to the capacity-building of leaders in politics, the administration, the private and public sector as well as the civil society of Cape Verde and to raise their numbers in order to respond to the challenges of the development of the country.³⁰² More precisely, the cooperation shall include a) support of the conceptualization and implementation of training courses at the Master and PhD level in the fields of finances, banking and computer science; b) enrichment of the library resources of the University of Cape Verde; c) assistance with the development of a grade management system; d) the mobility of faculty members; e) student mobility programmes; f) support with the development of the scientific, pedagogical and financial scheme of professional higher education courses at the University of Cape Verde; g) cooperation concerning the organization of a funding system and the fundraising for scientific research; h) traineeship programmes for graduate students and as complementary study module; and i) the setting up of a lectureship in Luxembourgish language at the University of Cape Verde.³⁰³

The agreement is valid for a period of five years. The activities undertaken within the framework of this agreement shall be evaluated at the latest one year before the expiration

³⁰⁰ Schmit (2010). For the purpose of this report, additional information is provided on the respective points where possible. The respective sources of information are indicated.

³⁰¹ Upon request, a copy of the framework agreement (*accord de coopération*) between the University of Cape Verde and the University of Luxembourg was provided by the responsible officer at the University of Luxembourg, 15 March 2011.

³⁰² Preamble of the framework agreement (*accord de coopération*) between the University of Cape Verde and the University of Luxembourg.

³⁰³ First clause of the framework agreement (*accord de coopération*) between the University of Cape Verde and the University of Luxembourg.

date of the agreement and serve as basis for a joint decision on its renewal.³⁰⁴ Representatives of the University of Cape Verde visited the University of Luxembourg in 2010 and discussions were held on developing a partnership in computer science and business administration. To date, however, no concrete measures have been implemented yet.³⁰⁵ A close communication between the Universities of Luxembourg and Cape Verde and the respective national ministries and an assessment of the concrete ideas and available resources on the side of the Government of Luxembourg were mentioned as some of the measures that would facilitate the cooperation.³⁰⁶

b) The project *Migrer les yeux ouverts* was set up in December 2006 by the Development Co-operation Directorate at the Ministry of Foreign Affairs. It was carried out by the local Office of the Development Co-operation in Praia, the capital of Cape Verde. It primarily aimed, ‘from a preventive point of view’, to familiarize Cape Verdean nationals who considered joining their family members in Luxembourg about the opportunities and constraints of an emigration including the social, linguistic and other aspects realities of life in Luxembourg so as to enable them to make a well-informed decision.³⁰⁷ An estimated number of 2 200 people attended information and awareness raising activities offered by the project. Between December 2008 and October 2010, 216 individuals submitted an application to obtain an authorization to stay through family reunification (*autorisation de séjour en vue d’un regroupement familial*) through the local Office of Development Co-operation of Luxembourg in Praia. 156 of these applications were decided favourably.³⁰⁸ The project also aimed to reinforce the synergies between local NGOs and their counterparts in Luxembourg in order to facilitate contacts between the Cape Verdean diaspora in Luxembourg and the Cape Verdean associations.³⁰⁹ The person in charge of the *Migrer les yeux ouverts* project was a Luxembourg national of Cape Verdean origin who, with her cultural and linguistic skills and her familiarity with both national contexts, may be considered a ‘prime example’ of the potential benefit of members of the diaspora for the country of destination and the country of

³⁰⁴ Fifth clause of the framework agreement (*accord de coopération*) between the University of Cape Verde and the University of Luxembourg.

³⁰⁵ Personal communication with the responsible officer at the University of Luxembourg, 24 March 2011.

³⁰⁶ Personal communication with the responsible officer at the University of Luxembourg, 24 March 2011.

³⁰⁷ Centre de Documentation et d’Animation Interculturelle (2010: 13).

³⁰⁸ Schmit (2010).

³⁰⁹ Centre de Documentation et d’Animation Interculturelle (2010: 13). See also Schiltz (2008).

origin.³¹⁰ The project phased out in November 2010.³¹¹ In the future, the activities will be carried out through joint EU/Cape Verde programmes like the *Centro de Apoio ao Migrante no País de Origem* (CAMPO)³¹² with the active participation of the embassy of Luxembourg in Praia. CAMPO was established by Portugal in January 2008 and targets all prospective migrants, not only family members of foreign residents, as well as Cape Verdean emigrants wishing to return to their country of origin to pursue employment or self-employment there.³¹³

c) In 2009, the Government of Luxembourg had contacts with the Cape Verdean authorities to explore the possibilities of concluding a bilateral agreement on circular migration of a temporary character. The Cape Verdean authorities are asked to put forward a proposal concerning the design and implementation of such a circular migration programme. Given that, as of November 2010, precise negotiations had not yet been launched, the Minister of Labour, Employment and Immigration could not provide information on the exact content of such an agreement. However, in his response to the parliamentary inquiry, the Minister stated that, for Luxembourg, the agreement must be based on the principles of partnership and reciprocity and will thus be different from a labour agreement. Luxembourg will propose to stipulate clauses that favour the migration exchange between Cape Verde and Luxembourg, including the Cape Verdean diaspora living in Luxembourg.³¹⁴ In the semi structured interview, the representative of Cape Verde also emphasized the good diplomatic relationships with Luxembourg that are characterized by mutual respect, cooperation, and openness.³¹⁵

³¹⁰ Interview 2 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political actor, page 5, lines 12-27.

³¹¹ Centre de Documentation et d’Animation Interculturelle (2010: 13).

³¹² <http://www.campo.com.cv/>

³¹³ Compare proposals i (page 8) made in the Annex of proposed activities under section ‘Employment, management and facilitation of legal migration and integration’ of the Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde of 21 May 2008.

³¹⁴ Schmit (2010).

³¹⁵ Interview 1 (EMN Study ‘Circular and Temporary Migration’), 15 November 2010, with a political representative of the Republic of Cape Verde, page 9, line 42 – page 10 line 18.

3. DATA ON CIRCULAR AND TEMPORARY MIGRATION

Well-informed policy-making requires the availability and accessibility of up-to-date, reliable, and comprehensive quantitative but also qualitative data. This allows for a better understanding of complex interactions, current and prospective trends as well as of potential and actual impacts concerning the respective subject-matter. It also applies to the design and implementation of appropriate migration policy frameworks and, more particularly, of circular and/or temporary labour migration-related policy measures.³¹⁶

The lack of data in Luxembourg on temporary and circular migration patterns to and from Luxembourg demonstrates the ‘permanent migration paradigm’ that is guiding data collection in Luxembourg, and that the subject has not been analysed by the government. This situation generates that current data collection systems do not allow to evaluate circular and temporary migration patterns. Curiously the situation of Luxembourg is not different from the situation in other developed countries. One facet of migration behavior which remains chronically under-researched in developed countries is circular mobility³¹⁷. The lack of empirical data and literature on circular migration can largely be explained by the non-availability of suitable (longitudinal) data³¹⁸. However, the neglect of circular or temporary mobility is a natural consequence of the governments’ predominant focus on permanent migration. The so-called ‘permanent migration paradigm’ according to which migration is understood as a one-time, lasting change of usual residence across borders still defines most data collection systems³¹⁹. An additional problem with circular migration is that there is no a standard definition. The doctrine and the working definitions used by different international organizations (i.e. ILO) do not facilitate the creation of objective criteria for statistical analysis.

Migration statistics are problematic because migration as a concept is difficult to define, to measure and to classify. The lack of conceptual clarity of and disagreements about definitions, for instance, who is or should be considered as a (permanent/transnational/temporary/circular/return etc.) migrant, hampers the compilation of data. Varying definitions and the ensuing lack of comparable measures used to assess migration can lead to very different results.³²⁰ On

³¹⁶ Köhler (2008: 237p.).

³¹⁷ Bell (2000: 1).

³¹⁸ Constant and Zimmermann (2007: 3).

³¹⁹ Agunias and Newland (2007: 4); Constant and Zimmermann (2007: 2).

³²⁰ Bell (2000: 1); Köhler (2008: 239).

top of that, the very mobility of the subjects complicates any data collection effort. This results in a lack of robust global or comparative national figures serving as a basis for sensible policy developments.³²¹

3.1 Available National Data

The three main sources of migration data are administrative records, population censuses, and sample surveys³²². Administrative records such as population registers, registers of foreigners, records on residence and work permits, data on visa issuance, and border collection data are rich in detail, but often remain insufficiently exploited, because of their cost.

With the crisis, data collection has been neglected, allowing the governments to grant funds to more urgent social necessities. Yet data processing is necessary for foreseen and confronting social problems. However, the mobility of the subjects complicates any data collection effort³²³, as well that international migration is a politically sensitive issue and countries may be reluctant to collect, standardize or publish detailed data on migrants.³²⁴ Moreover, the costs involved in data collection and processing can be considerable, particularly for developing countries. The authors of the Report of the Commission on International Migration Data for Development Research and Policy emphasize the lack of robust global or comparative national figures on which to base sensible policy developments in the context of migration and development:

Santo Tomas and Summers state that the data on international migration that countries now collect and publish are so limited, however, that we know much less about how much and what kind of migration is happening in today's world than is known about international trade and investment flows. As a result, it is often not possible to answer some of the most basic questions about how the movement of people interacts with the development process.

³²¹ Black and Skeldon (2009: 4/14).

³²² Köhler (2008: 240).

³²³ Black and Skeldon (2009: 4).

³²⁴ Santo Tomas and Summers (2009).

Although all migrant destination countries actively regulate and shape this movement, setting migration policies are often set in the dark.³²⁵

The lack of empirical data and literature on circular migration can largely be explained by the non-availability of suitable (longitudinal) statistical data.³²⁶ The neglect of circular or temporary mobility, on the other hand, is mainly attributed to the pre-occupation with permanent migration and the fact that conventional categories of data collections are no longer sufficient to capture non-permanent migrations. They either exclude temporary residents altogether, or if they collect information from them, the amount of detail is limited, or information not processed or tabulated. As a result, they fail to promote understanding of present policy issues.³²⁷

Köhler points out that data collection systems in the field of migration face the challenge of having to serve and reconcile different, and at times conflicting, information needs at various levels of government, i.e. policy-makers, programme managers and case workers.³²⁸ Much of the data used for policy or programme management purposes and/or on which expert reports may be based, are initially generated by the programme staff who often have little stake in, or understanding of, how the aggregate records of their individual transactions are used by agency heads and policymakers. In order to generate accurate and timely data on labour migration for policy purposes, a data collection system needs to recognize the different information needs at the various levels of government and find ways to balance them. This is further warranted by the circumstance that the concepts, definitions and classifications used in the legislation and or procedures within the administrative system are often different from those required to meet statistical user needs. The data are not always entered into the administrative database in accordance with the normal statistical standards of quality.³²⁹

However, in Luxembourg the data collection on temporary and circular migration has been neglected. It is evident that the workers' demand for circular migration is not enormous but also it is important to mention that the migration situation of Luxembourg is totally different

³²⁵ Santo Tomas and Summers (2009: 1). In the same publication, the authors also provide a list of recent 'laudable initiatives' that aim to improve the availability of international migration statistics (p. 5-9).

³²⁶ Constant and Zimmermann (2007: 3).

³²⁷ Hugo (2003: 1), Agunias and Newland (2007: 5), Köhler (2008: 246).

³²⁸ Köhler (2008: 238pp).

³²⁹ Köhler (2008: 238-240).

from other Member States. It is a migration composed mainly by cross-border workers and mainly EU citizens that are based in what is known as the Greater Region. Also, it has the lowest percentage of third-country national migrants in the EU.³³⁰

As can be seen from Table 7, the composition of the employed internal workforce by citizenship and country of residence in Luxembourg demonstrates the importance of cross-border workers.

Table 7. Composition of the employed internal labour force by citizenship and country of residence, 2005-2010

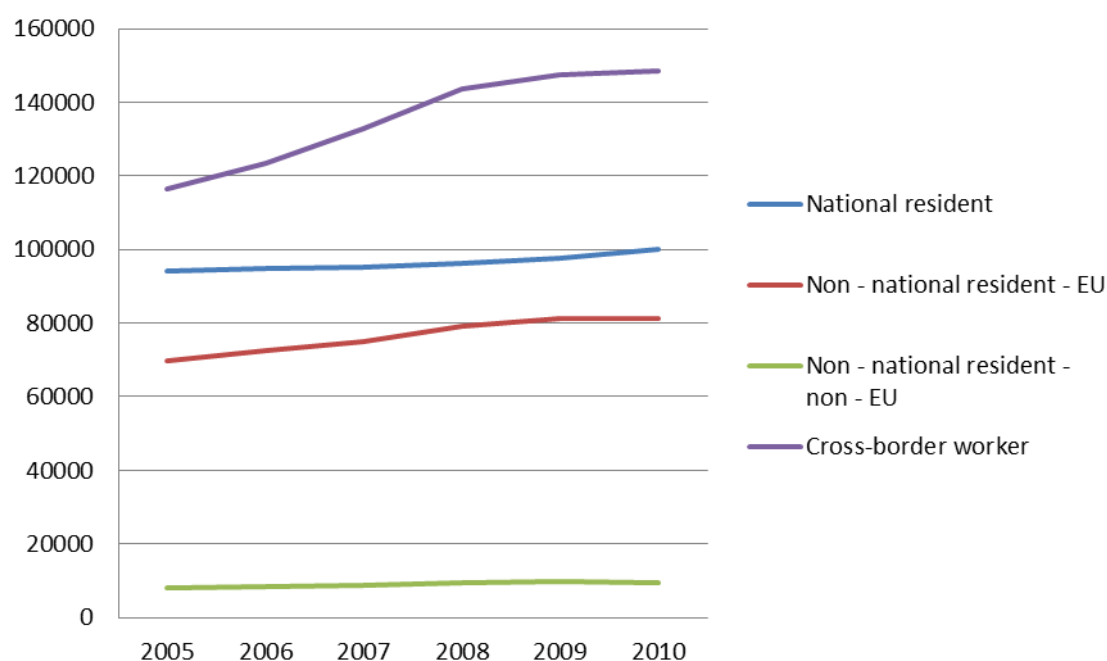
Specification	2005	2006	2007	2008	2009	2010
National resident	94 000	94 900	95 100	96 400	97 670	100 104
Non-national resident: EU	69 800	72 500	75 000	79 200	81 273	81 330
Non-national resident: non-EU	8 100	8 500	8 900	9 500	9 721	9 582
Cross-border workers	116 400	123 600	132 700	143 700	147 400	148 541
TOTAL	288 300	299 500	311 700	328 800	336 064	339 557

Source: STATEC © LU EMN NCP

Table 7 and Graph 2 show the development of the composition of the internal labour force between 2005 and 2010. In 2010, cross-border workers constituted 43.8% of the workforce, compared to 29.5% that are the national residents, 24.0% are other EU residents and only 3% are third-country nationals. Most migrants or cross-border workers coming to Luxembourg are nationals of neighbouring countries (Belgium, France and Germany) or other EU Member States (Portugal, United Kingdom, the Netherlands and Poland).

³³⁰ http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-10-045/EN/KS-SF-10-045-EN.PDF

Graph 2. Composition of employed internal labour force by citizenship and country of residence, 2005-2010



SOURCE: STATEC © LU EMN NCP

Given that Luxembourg has not initiated any specific circular or temporary migration programme, the following analysis will describe relevant national data and examine to what extent they allow to draw conclusions on the potential circular or temporary character of current migration to Luxembourg.

3.1.1 Administrative Data

The three main sources of migration data are administrative records, population censuses, and sample surveys.³³¹ Administrative records such as population registers, registers of foreigners, records on residence and work permits, data on visa issuance, and border collection data can be reliable sources of statistics in cases where the administrative system is well organized, the quality of reporting is sound and coverage is reasonably complete. That granted, administrative records are rich in detail, but often remain insufficiently exploited. This can be

³³¹ Köhler (2008: 240).

partly explained by the processing costs to convert administrative records into useable forms which may, in contrast to the collection costs, be quite high.³³² Köhler also points to the fact that migration data collection systems have to serve and reconcile different, and at times conflicting, information needs at various levels of government, i.e. policy-makers, programme managers and case workers.³³³ Much of the data used for policy or programme management purposes and/or on which expert reports may be based, is initially generated by the programme staff that often are not aware of how the aggregate records they collect are used by agency heads and policy-makers. In order to generate accurate and timely data on labour migration for policy purposes, a data collection system needs to recognize the different information needs at the various levels of government and find ways to balance them. This is further warranted by the circumstance that the concepts, definitions and classifications used in the legislation or in procedures within the administrative system are often different from those required to meet statistical user needs. Besides, data is not always entered into the administrative database in accordance with the normal statistical standards of quality.³³⁴

Migration inflows and outflows

In Luxembourg, the number of incoming migrants (*arrivées*) and outgoing migrants (*départs*) are based on the registration of individuals in the General Register of Natural Persons (*Répertoire general des personnes physiques*) at the 1 January and 31 December of each year as transmitted by the State Information Technology Centre (*Centre des technologies de l'information de l'État*) to the National Statistical Institute (STATEC). As such, the figures provide a 'picture' of the number of newly registered persons who had not been registered yet at the 1 January of the previous year (migration inflow) and those who were no longer registered compared to the 31 December of the previous year (migration outflows).

However, short-term migrants who enter and leave the country within the same civil year and usual residents moving out of Luxembourg for less than twelve months are not included in the present data. This leads to an underestimation of migration flows, particularly of temporary migration. In addition, the reliability of the data depends on the compliance of persons with the legal requirement to register at the Municipal Office in their locality (*commune*) upon

³³² Köhler (2008: 40).

³³³ Köhler (2008: 238pp.).

³³⁴ Köhler (2008: 238-240).

their arrival and de-register before their departure. Yet, EU/EEA and Swiss citizens may stay in Luxembourg for up to 90 days as long as they have a valid identity card or passport and irrespective of the purpose of their stay. Only those EU/EEA and Swiss nationals who intend to stay in Luxembourg for more than 90 days must make a declaration (*déclaration d'arrivée*) at the municipality in their locality within eight days of their arrival. Also, nationals and migrants alike often fail to de-register when they leave the country. For instance, high school graduates who chose to pursue their university education in one of the neighboring countries of Luxembourg or elsewhere abroad usually do not make a declaration of departure (*declaration de départ*).

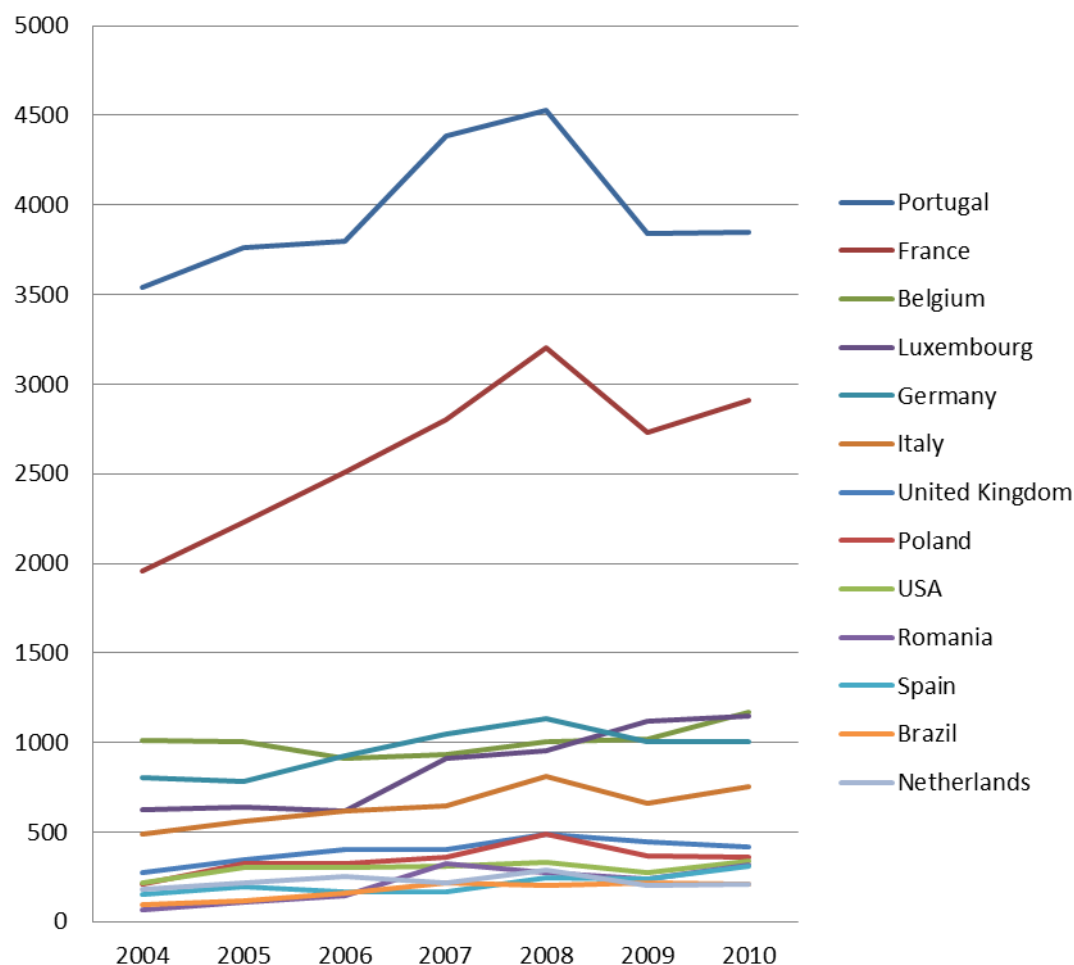
The data transferred to STATEC has been made anonymous for data protection reasons and only contains information on the distribution by nationality. Due to the lack of information on the national identification number (*numéro matricule luxembourgeois*) of individuals, data on arrival and departure cannot be linked to one person in order to create a migration profile. It is also not possible to identify the number of plural citizens or naturalized immigrants among the migration inflows and outflows. In addition, there is no data on the reason for departure and the next place of residence. These constraints do not allow for a meaningful interpretation of the data on migration inflows and outflows, particularly with regard to the identification of circular and temporary migration patterns. Table 7 and Graph 3 show the development of international migration movements to and from Luxembourg between 2004 and 2010. The number of arrivals increased steadily from 12 872 persons in 2004 to 17 758 persons in 2008. This number was exceptionally high and, due to the global financial and economic crisis and its effects at the national level, dropped to 15 751 in 2009. With 16 962 individuals, the number of incoming migrants turned upward again in 2010. The overwhelming majority of those were EU-27 citizens. In fact, in 2010, only U.S. American citizens figure as third-country nationals among the ten main countries of citizenship with 335 of 16 962 incoming migrants (see Table 8).

Table 8. Migration inflows by main countries of citizenship, 2004 – 2010

Country of Citizenship	2004	2005	2006	2007	2008	2009	2010
Portugal	3 542	3 761	3 796	4 385	4 531	3 844	3 845
France	1 957	2 227	2 510	2 799	3 201	2 730	2 909
Belgium	1 012	1 007	911	935	1 002	1 020	1 171
Luxembourg	627	638	621	909	957	1 116	1 148
Germany	802	781	929	1 045	1 130	1 008	1 008
Italy	486	560	619	646	813	659	751
United Kingdom	272	349	402	400	489	446	415
Poland	213	325	324	361	489	365	361
USA	215	303	302	308	332	274	335
Romania	66	108	142	323	277	238	317
Spain	151	195	168	165	248	236	308
Brazil	98	115	157	215	204	216	209
Netherlands	179	216	250	218	291	204	207
Other	3 252	3 812	3 221	3 966	3 794	3 395	3 978
TOTAL	12 872	14 397	14 352	16 675	17 758	15 751	16 962

Source: STATEC © EMN NCP LU

Graph 3. Arrivals by nationality, 2004-2010



Source: STATEC © LU EMN NCP

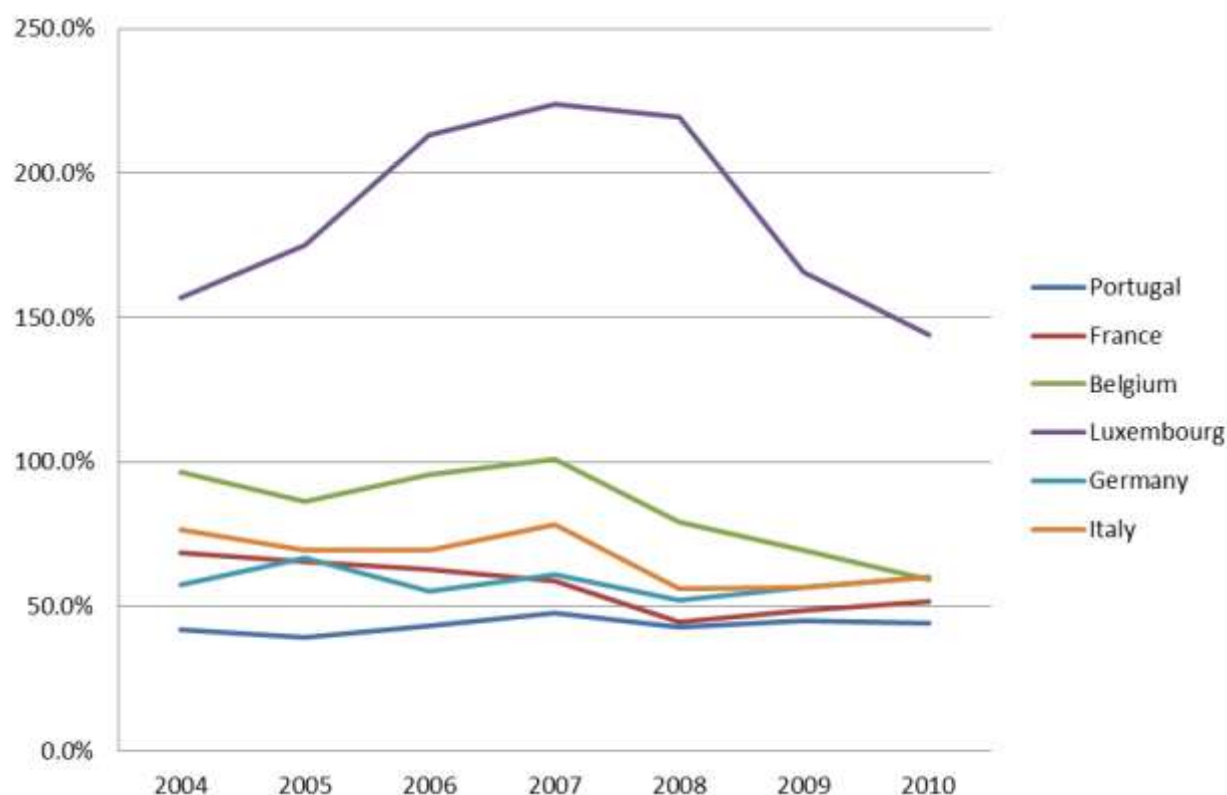
Luxembourg nationals, on the other hand, constituted the fourth largest group among the migration inflows in 2010 with 1 148 of 16 962 arrivals. Among the migration outflows, they represented the largest national group both in 2008 and 2009 and the second largest group in 2010 with 1 651 of 9 302 departures after Portuguese nationals (see Table 9).

Table 9. Migration outflows by main countries of citizenship, 2004 – 2010

Country of Citizenship	2004	2005	2006	2007	2008	2009	2010
Portugal	1 490	1 477	1 634	2 092	1 947	1 730	1 696
France	1 340	1 457	1 577	1 640	1 432	1 330	1 509
Belgium	978	867	873	945	795	706	696
Luxembourg	983	1 117	1 323	2 033	2 100	1 848	1 651
Germany	460	523	515	639	591	571	604
Italy	371	390	430	505	458	373	450
United Kingdom	317	336	371	289	278	239	272
Poland	23	43	66	125	110	136	142
USA	165	174	129	196	165	144	122
Romania	13	25	25	36	66	67	75
Spain	105	98	152	157	109	126	127
Brazil	21	35	24	27	64	78	59
Netherlands	152	182	173	190	178	152	192
Other	2 062	1 563	1 709	1 800	2 943	1 668	1 707
TOTAL	8 480	8 287	9 001	10 674	10 058	9 168	9 302

Source: STATEC © LU EMN NCP

Graph 4. Migration balance for six main countries of nationality (in percentages), 2004-2010



Source: STATEC © LU EMN NCP

As mentioned before, the available data only allows us to describe recent trends of migration movements but not to interpret it or make inferences. Graph 4 illustrates the migration balance in percentages for the six main countries of nationality. Accordingly, the number of Portuguese, French, Belgian, German and Italian arriving in Luxembourg is higher than the number of their departures with the exception of Luxembourg nationals who tend to leave in greater numbers than to return. In 2007, more than twice as many Luxembourgers left the country than came back (909 arrivals versus 2 033 departures or a variation of 223.7 percent). This variation converged somewhat in the following years and reached 1.43 in 2010 (1 148 arrivals versus 1 651 departures). Given the lack of further information, however, we cannot make any statements as to what extent this includes, for instance, professionals who take up job opportunities abroad, retired naturalized immigrants returning to their country of origin

temporarily or permanently, or nationals who simply bought a house or apartment in the border area of Belgium, France or Germany but continue to work in Luxembourg.

Residence and Work Permits

Temporary residence and work permits may serve as indicator for the extent of temporary migration. However, this presupposes the fulfillment of at least two conditions. Firstly, there needs to be a clear and consistent distinction in administrative records between residence and work permits that have been issued for the first time and those that have been renewed. Information is also necessary on the number of renewal requests that have been refused. In Luxembourg, that is not the case so far. This lack of distinction makes comparisons difficult and interpretations nearly impossible. Secondly, measures would need to be in place to determine whether persons actually left the country after the expiry of their residence and/or work permit and return to their countries of origin or move onward to a third country or simply overstay their permit and remain in the country with an irregular immigration status. EU Member States collect statistics on the numbers of third-country nationals found to be illegally present in the Member State's territory under national laws relating to immigration and transmit them to EUROSTAT. Due to the nature of the matter, however, these data are incomplete and, above that, they lump different categories of persons together (e.g. persons who entered the country without valid documents, over stayers, and failed applicants for international protection who have been ordered to leave). It is even more difficult to keep track of the mobility patterns of EU citizens since they enjoy freedom of movement within the territory of EU Member States and do not require residence or work permits.

Tables 9 and 10 present figures on residence documents that have been issued to non-nationals in 2009 and 2010 in Luxembourg. They include only persons who stay in Luxembourg for more than three months but do not capture short-term stayers. The immigration reform of 2008 changed the legislation substantially as a result of which corresponding figures of previous years are not comparable.

EU/EEA and Swiss nationals wishing to stay for more than three months must obtain a registration certificate (*attestation d'enregistrement*) from the municipality in their locality

within three months of their arrival³³⁵. After a legal stay of five consecutive years, they may request a permanent residence certificate (*attestation de séjour permanent*).³³⁶ EU citizen or third-country national family members of EU citizens who wish to stay for more than three months must obtain a first residence card (*1ère carte de séjour*) from the Municipal Office in their locality within three months of their arrival³³⁷. This card is valid for up to five years and family members may request a permanent residence card as family member of an EU citizen (*carte de séjour permanent*) after a legal stay of five consecutive years.³³⁸ EU officials, staff of international organizations and diplomatic staff and their families are provided with a certificate (*titre de légitimation*). Third-country nationals who wish to stay in Luxembourg for more than three months need to obtain a temporary authorization to stay (*autorisation de séjour temporaire*) before entering the country.³³⁹ They must request a residence permit (*titre de séjour*) within three months after their arrival.³⁴⁰ Access to the national labour market is still restricted for Bulgarian and Romanian citizens until 31 December 2011. They are obliged to request a work permit (*autorisation de travail*).³⁴¹ Similarly, third-country national cross-border workers³⁴² and the family members of Bulgarian and Romanian citizens require a work permit.³⁴³

³³⁵ Article 8 of the Law of 29 August 2008.

³³⁶ Article 9 of the Law of 29 August 2008.

³³⁷ Article 15 of the Law of 29 August 2008.

³³⁸ Article 20 of the Law of 29 August 2008.

³³⁹ Article 38 of the Law of 29 August 2008.

³⁴⁰ Article 40 of the Law of 29 August 2008.

³⁴¹ Article 6 (3) of Law of 29 August 2008.

³⁴² Article 50 of the Law of 29 August 2008.

³⁴³ Article 22 of the Law of 29 August 2008.

Table 10. Residence documents issued in 2009 and 2010

Type of document	2009	2010
Registration certificate for EU citizens (<i>attestation d'enregistrement</i>)	9 854	11 234
Permanent resident certificate for EU citizens (<i>attestation de séjour permanent</i>)	12 669	11 793
First residence card for family members of EU citizens (<i>1ère carte de séjour</i>)	1 819	1 496
Permanent residence card for family members of EU citizens (<i>carte de séjour permanent</i>)	427	324
Certificate for EU officials, staff of international organizations and diplomatic staff (<i>titre de légitimation</i>)	2 285	2 067
Temporary authorization to stay for third-country nationals (<i>autorisation de séjour temporaire</i>)	1 339	1 684
Residence permit for third-country nationals (<i>titre de séjour</i>) (first issuance and renewals)	8 098	6 945
Work permit for third-country nationals (<i>autorisation de travail</i>)	427	366

Source: Directorate of Immigration, Ministry of Foreign Affairs © LU EMN NCP

Table 10 shows that the majority of residence permits are issued to EU citizens. This situation shows the type of migration workers that compose the labour force of Luxembourg. In 2010, 11 234 individuals of EU origin obtained a registration certificate (*attestation d'enregistrement*), and 11 793 persons, received a permanent residence certificate (*attestation de séjour permanent*). These people have to live in Luxembourg at least five consecutive years. Article 9 of the Law of 29 August 2008, however, stipulates the cases in which the continuity of stay is not affected by temporary absences or longer absences. The legal framework foresees multiples situations in which EU citizens can engage in temporary or circular migration but can allow that they can obtain a permanent residence certificate. Similarly, the permanent residence permit is only forfeited by an absence of more than two years from the Luxembourg.³⁴⁴ As a consequence, the number of permanent residence certificates does not reflect the real number of EU citizens who are settled permanently in Luxembourg. We have to notice that for acquiring the permanent residence certificate the

³⁴⁴ Article 9 Section 3 of the Law of 29 August 2008.

applicant must prove his continuous stay³⁴⁵ in the country but once the permanent resident status is acquired there is no possibility to identify the absences of the territory, especially for the geographical dimensions of the country.

The number of residence cards for family members of EU citizens (*cartes de séjour*) issued in 2010 is comparatively small in comparison to the number of registration certificates (*attestations d'enregistrement*). This probably means that EU citizens either come to Luxembourg as single, or their spouse or registered domestic partner also obtain a registration certificate (*attestations d'enregistrement*). In the same period, 1 496 first residence cards and 324 permanent residence cards were issued to family members of EU citizens. Also, 2 067 certificates (*titres de légitimation*) were issued to EU officials, staff of international organizations and diplomatic staff.

In 2010, the Directorate of Immigration issued in total 1 684 temporary authorizations to stay (*autorisation de séjour temporaire*) to third-country nationals to enter and stay in Luxembourg. This number represents is equal to only 15% of the total amount of registration certificates (*attestations d'enregistrement*) issued to EU citizens by the Municipalities in the same period. The relatively large number of 6 945 residence permits (*titre de séjour*) when compared to the number of temporary authorizations to stay (*autorisation de séjour temporaire*) is because that figure comprehends first issuances and renewals, combined. In addition, 366 third-country nationals were granted a work permit (*autorisation de travail*).

³⁴⁵ Article 9 Section 4 of the Law of 29 August 2008.

Table 11. Residence permits for third-country nationals issued by the Ministry of Foreign Affairs in 2009 and 2010

AST Temporary residence permit (first issuance) (*autorisation de séjour temporaire*)
 TS Residence permit (first issuance and renewals) (*titre de séjour*)
 AT Work permit (*autorisation de travail*)

	2009			2010		
Category/Type	AST	TS	AT	AST	TS	AT
Salaried worker	116	1 815	471	136	1 306	303
Posted worker	12	23	1	16	18	2
Intra-corporate transferee	129	167	12	154	226	11
Highly qualified worker	107	195	13	125	128	16
Self-employed worker	7	87	0	9	70	0
Sportsperson	5	9	0	28	19	4
Coach	1	3	0	3	5	2
Sportsperson-coach	1	3	1	5	4	0
Pupil	279	200	1	234	241	0
Student	129	204	1	177	266	0
Trainee	23	12	8	21	12	1
Volunteer	6	5	1	4	8	0
Researcher	15	15	6	35	36	14
Family member of a third-country national	394	3 391	12	520	2 999	10
Residence permit for private reasons	101	386	0	160	504	0
Long-term residence permit (EU)	13	1 091	0	0	770	0
Service provider (EU)	0	1	0	5	3	3
International protection	1	296	0	52	225	0
Retired worker	/0	195	0	0	105	0
TOTAL	1 339	8 098	527	1 684	6 945	366

Source: Directorate of Immigration, Ministry of Foreign Affairs © LU EMN NCP
Labour Market Data

Each salaried worker must be registered with the General Inspection of Social Security (IGSS), as a reason of which the IGSS database is the most extensive available data on the employed labour force.

The data base also includes the workers coming from third countries that are irregular migrants but who are registered with social security. Therefore, the IGSS data is based on the declaration made by the employers as well as the voluntary declaration made by some workers. The database lists workers according to their nationality, to the sector of activity in line with the NACE code, the classification of economic activities in the European Community, and to the profession of their current employment in line with the CITP code, the international classification of types of professions. This data also gives information about country of birth, country of residence, the beginning and the end of activity and the changes that the worker has made.

The information cannot be used to measure circular migration because it does not mention if a third country national is a legal resident and the reason why he/she is registered. It is important also to mention that EU members that come to work in Luxembourg for less than three months are not obliged to register to the social security and irregular migrants can register even if they are not working. Another problem is that the data does not indicate the reason of departure from the labour force, such as retirement, childbirth, unemployment, death, etc.

However, it is important to mention that the database can be used in the future to measure migration flows if they can included certain variables because once a worker is registered, he or she is registered with his national identification number (*matricule*). That means that even if he or she quits his or her job and leaves the country, the day he or she returns he or she will be registered with the same number. That will permit to follow the working history of the individual.

The Labour Inspectorate (ITM) keeps records of posted workers. However, it is important to note that the Labour Inspectorate (ITM) does not distinguish between posted workers (*travailleurs détachés*)³⁴⁶ and intra-corporate transferees (*travailleurs transférées*)³⁴⁷, in contrast to the Directorate of Immigration. Due to this lack of differentiation, the data cannot

³⁴⁶ Article 48 of the Law of 29 August 2008.

³⁴⁷ Article 47 of the Law of 29 August 2008.

be used. Furthermore, there is not data available specifically on worker's nationality, because the ITM only registers the company that sends the workers. The main reason is that the ITM must control these people in accordance with the companies because their working condition is valid only if they work for that company. The moment that they quit working for the company they lose their working status in Luxembourg.³⁴⁸

In 2009 there were 16 002 posted workers registered in the ITM. In 2010, there were only 13 085 workers. This represents a decrease by 22.6 percent. However, for 2010, the total number of third-country nationals registered as posted workers was less than 50.³⁴⁹

Table 12. National origin of companies posting workers, 2009 and 2010

Origin of companies posting workers	31 December 2009	22 December 2010	Increase in percentages
Germany	4 783	5 349	11.8
Belgium	1 190	1 279	7.5
France	815	920	12.89
Netherlands	121	136	12.4
Italy	108	114	5.6
Switzerland	79	89	12.7
Poland	55	65	18.2
Hungary	27	27	0.0
Other	200	458	129.0
TOTAL	7 378	8 437	14.4

Source: ITM © LU EMN NCP

Another source of administrative data which can be useful to learn more about a particular category of temporary migrants is university enrolment data. The University of Luxembourg is the country's only university. It is the only university where students can make PhDs and where foreign students come to do their studies. There are still other institutes of higher education (e.g., the public research centre CEPS/INSTEAD) that work with other higher education institutions abroad.

Table 13 shows the number of enrolled students at the University of Luxembourg by type of programmes (i.e., Bachelor, Master, PhD). It is important to notice that the increase of enrolments in the University is substantial. The total amount of students has doubled during a

³⁴⁸ See Articles 47 Section 4 and 48 Section 4 of the Law of 29 August 2008.

³⁴⁹ Personal communication with the Labour Inspectorate (ITM), 25 February 2011.

five-year period (from 2 692 in 2005 to 5 177 in 2010). Nevertheless, if we exclude the ‘other formation’ category (it has declined from 1 562 students in 2005 to only 826 in 2010, this represents a reduction of 189.1%) the numbers are more significant: In 2005 there were only 1 130 students divided in bachelor and master programmes. In 2010, the total number of academic students was 4 351. This means an increase of 385% in five years in general terms.

Table 13. Number of enrolled students by type of programme, 2005-2010

Programme	Winter 05/06	Winter 06/07	Winter 07/08	Winter 08/09	Winter 09/10	Winter 10/11
Bachelor	1 005	1 784	2 350	2 719	2 962	3 093
Master	125	259	442	557	800	900
PhD	0	148	186	250	296	358
Other ³⁵⁰	1 562	1 150	1 159	991	876	826
TOTAL	2 692	3 341	4 137	4 517	4 934	5 177

Source: Student Life Service (Service des Études et de la Vie Étudiante - SEVE) of the University of Luxembourg © LU EMN NCP

The success of the University of Luxembourg also can be measured on the international level. Every passing year, the number of foreign students enrolling at the University has been increasing.

³⁵⁰ The category ‘Other’ refers to further qualifications as industrial engineer (until summer term 08/09), specific training in general medicine, certificate (CUT) in management (until summer term 07/08), further training in Luxembourgish law (until summer term 08/09), for auditors and for certified public accountants, training of primary school teachers (until summer term 07/08), 3rd year of the training of certified educators (until summer term 07/08), teacher training (since summer 05/06), continuing education in spatial planning (since winter term 06/07) and in ‘Luxembourgish as Foreign Language’ (since winter 07/08).

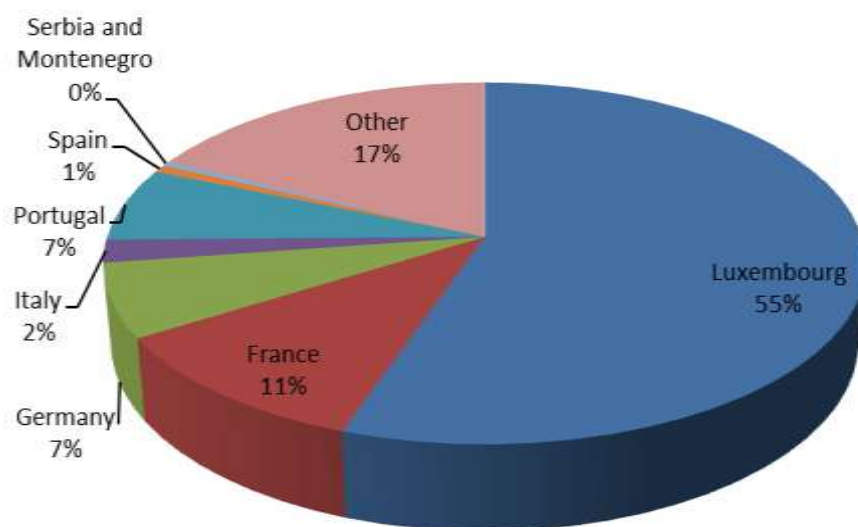
Table 14. Number of enrolled students by nationality (including further qualifications), 2007-2010

NATIONALITY	Winter 07/08	%	Winter 08/09	%	Winter 09/10	%	Winter 10/11	%
Luxembourg nationals	2 186	52.8	2 239	49.6	2 389	48.4	2 417	46.7
Non-nationals but citizens of other EU-26 countries	1 661	40.2	1 902	42.1	2 066	41.9	2 242	43.3
Other EU-15 citizens	1 534	37.1	1 748	38.7	1 915	38.8	2 065	39.9
EU-10 + EU-2 citizens	127	3.1	154	3.4	151	3.1	177	3.4
Citizens of countries outside the EU-27	290	7.0	376	8.3	477	9.7	518	10.0
European Free Trade Association (CH, IS, LI, NO)	5	0.1	15	0.3	16	0.3	15	0.3
Candidate countries (HR, MK, TK) from 2007	12	0.3	18	0.4	23	0.4	20	0.4
Citizenship other than of EU-27, EFTA and Candidate countries	273	6.6	343	7.6	438	8.9	483	9.3
Unknown	0	0	0	0	2	0	0	0
TOTAL	4 137	100	4 517	100	4 934	100	5 177	100

Source: Student Life Service (Service des Études et de la Vie Étudiante - SEVE) of the University of Luxembourg © LU EMN NCP

As we can see from the table above, not only the national student population has grown (10.6% between 2007 and 2010) but also the student population coming from other Member States (35% in the same period) and from countries outside of the EU (78.6%). In absolute numbers the foreign population has passed from 47.2% in 2007 to 53.3% in 2010, showing the internationalization of the student population. This situation follows the trend of the global population of Luxembourg as a globalized society, as it is shown by the graph below.

Graph 5. Nationality of newly enrolled students, University of Luxembourg. 2010



Source: Student Life Service (Service des Études et de la Vie Étudiante - SEVE) of the University of Luxembourg © LU EMN NCP

In 2010, Luxembourg nationals represented 60.2% of all newly enrolled students following a Bachelor's degree, 25.9% of those starting a Master's degree and 19.3% of those pursuing a PhD degree (see Table 15). By contrast, the percentage of newly registered students of EU origin increases with the level of the pursued studies, namely represent 32.9% of all new Bachelor's students, 49.1% of all new Master's students and 64.2% of all new PhD students. The distribution is similar for third-country national students, constituting 6.9% of the new Bachelor's students, 25.0% of the new Master's students, and 16.5% of the new PhD students. This distribution might be explained by the fact that most students begin their university education in their country of residence and opt to pursue a higher degree abroad.

Table 15. Number of enrolled students by nationality and programme (not including further qualifications), winter term 2010/2011

NATIONALITY/PROGRAMME	Bachelor	%	Master	%	PhD	%	TOTAL
Luxembourg nationals	1.863	60.2	233	25.9	69	19.3	2.165
Non-nationals but citizens of other EU-26 countries	1.017	32.9	442	49.1	230	64.2	1.688
EU-15 citizens	956	30.9	355	39.4	211	58.9	1.521
EU-10 + EU-2 citizens	61	2.0	87	9.7	19	5.3	167
Citizens of countries outside the EU-27	213	6.9	225	25.0	59	16.5	497
European Free Trade Association (CH, IS, LI, NO)	7	0.2	4	0.4	3	0.8	14
Candidate countries (HR, MK, TK) from 2007	8	0.3	10	1.1	2	0.6	20
Citizenship other than of EU-27, EFTA and Candidate countries	197	6.4	211	23.4	54	15.1	463
Unknown	1	0	0	0	0	0	1
TOTAL	3.093	100	900	100	358	100	4.531

Source: Student Life Service (Service des Études et de la Vie Étudiante - SEVE) of the University of Luxembourg © LU EMN NCP

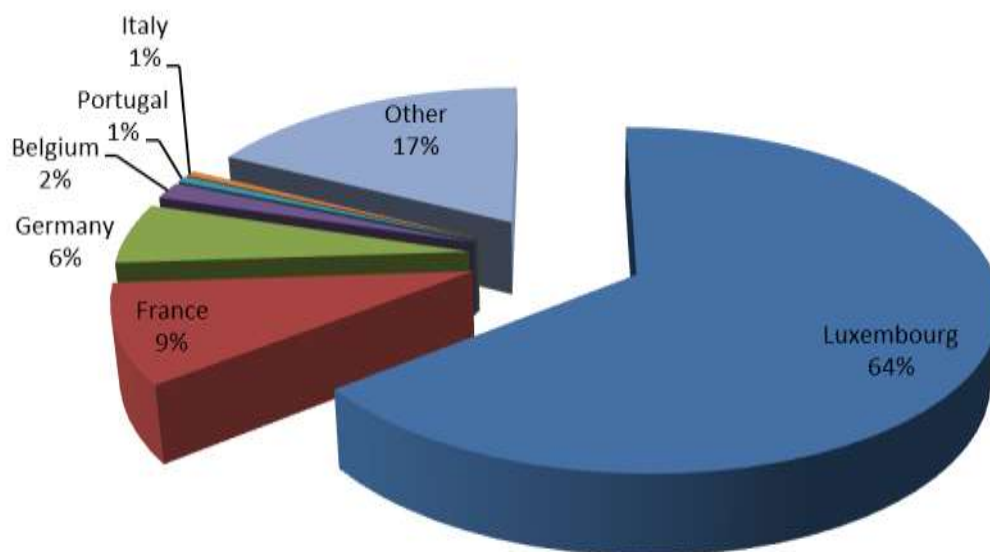
Table 16. Nationality and country of graduation (university-entrance diploma) of new Bachelor students at the University of Luxembourg, winter term 2010/2011

COUNTRY OF NATIONALITY	COUNTRY OF GRADUATION	Number	Percentage
Luxembourg	Luxembourg	700	53.1
Luxembourg	France	15	1.1
Luxembourg	Belgium	14	1.1
France	France	110	8.3
France	Luxembourg	33	2.5
Germany	Germany	77	5.8
Germany	Luxembourg	10	0.8
Italy	Luxembourg	20	1.5
Italy	Italy	7	0.5
Portugal	Luxembourg	72	5.5
Portugal	Portugal	8	0.6
Portugal	Belgium	7	0.5
Spain	Luxembourg	9	0.7
Serbia and Montenegro	Luxembourg	6	0.5
Other	Other	231	17.5
TOTAL		1 319	100

Source: Student Life Service (Service des Études et de la Vie Étudiante - SEVE) of the University of Luxembourg © LU EMN NCP

As shown by Graph 6.6% of the newly registered Bachelor students at the University of Luxembourg in have finished their secondary studies in Luxembourg.

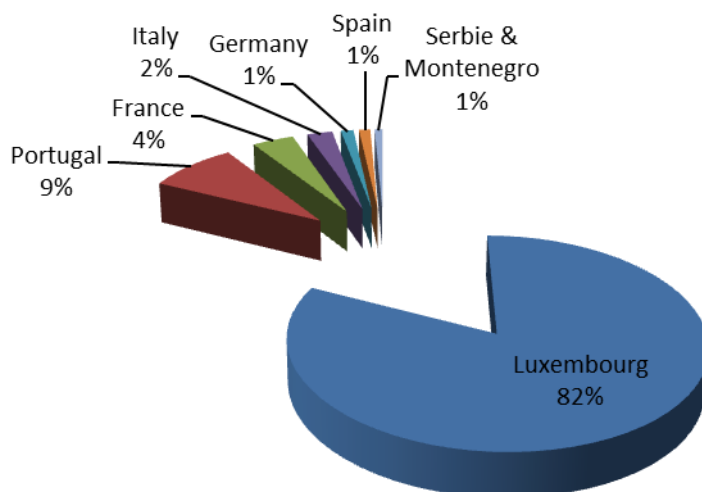
Graph 6. Country of diploma of newly enrolled Bachelor's students at University of Luxembourg, winter term 2010/2011



Source: Student Life Service (Service des Études et de la Vie Étudiante - SEVE) of the University of Luxembourg © LU EMN NCP

However, only 82% of the persons who hold a Luxembourgish secondary school graduation diploma are actually Luxembourgish citizens, thus reflecting the diversity of the national background of residents in the country

Graph 7. Luxembourgish diplomas by nationality 2010



Source: Student Life Service (Service des Études et de la Vie Étudiante - SEVE) of the University of Luxembourg © LU EMN NCP

3.1.2 Census Data

Two of the main problems of population censuses are their comparatively high collection costs and that the information obtained is not always timely because in most of the countries censuses are only conducted once every ten years.³⁵¹

Available census data cannot be used to measure circular migration. Normally, the census only provides a static snapshot of the population at a particular moment in time. The census that was conducted in February 2011, for example, did not capture seasonal migrant workers who come to Luxembourg in September for the grape harvest. Also, censuses have specific objectives. Article 2 of the Grand-Ducal Regulation of 25 November 2010 mentioned that the main objectives of the census 2011 to determine the number of people that constitute the resident population in the country on 1 February 2011, including their given name and family name, family ties with the referred person, place and date of birth, in case of foreigners date

³⁵¹ Köhler (2008: 241).

of entry to Luxembourg, country of residence in 1995, nationality, principal source of income, working situation and conditions, level of instruction, and the composition of the household.³⁵² It is evident that the main objective is the resident population in the country and not the temporary population that comes to work in the country on a non-permanent basis. The question on the place of residence 10 years ago, however, provides information on whether the respondent has already lived in another country other than his or her country of nationality or whether he or she returned to his or her country of origin in the meantime.

3.1.3 Survey Data

Survey data can be an additional source of information on the circular or temporary nature of current migration. However, the nature of the composition of the labour force in Luxembourg makes it almost impossible to evaluate the situation of migrants given the high degree of cross-border movement, including both cross-border workers as well as third country nationals. This is likely to result in a very low participation of migrants of migrants in the survey, so that the sample will not be representative. Furthermore, surveys often do not include relevant questions on temporary and circular migration but focus on what are considered more relevant issues of national interest. Also, there is a lack of longitudinal information on temporary and circular migration that track the same information on the same participants at multiples points in time and would thus allow to sketch the migration trajectories of persons.

The ILO developed an innovative technique which, instead of conducting specialized surveys, uses standard labour force surveys to measure remittances on the assumption that adding a migration module to pre-existing surveys reduces costs while ensuring a large sample size.³⁵³

Several countries all over the world, including all of the major migrant destination countries, currently carry out detailed representative Labour Force Surveys (LFS) at least once a year. Almost all of these gather detailed information on respondents' country of birth, occupation, education, and earnings and many include information on countries of prior residence for the

³⁵² <http://www.statistiques.public.lu/fr/publications/thematique/population-emploi/recensement-population-2001/resultats-detail-2001.pdf>

³⁵³ Köhler (2008: 248).

foreign-born. The enormous expense of collecting the data is already incurred; there remains the relatively small step of compiling them into a usable, harmonized form.

The sample sizes of these surveys mean that they do not permit collection of detailed data on migrants from all possible countries of origin, but they do contain a great wealth of information on migrants from major migration corridors.

The European Union now compiles the LFS of all of its members into a unified, harmonized, annually updated database.³⁵⁴

Since migrants represent a very small fraction of the population in many countries of origin, and even in some important countries of destination, the sample sizes of traditional survey methods are often fundamentally limited. Traditional survey-based methods are therefore not universally applicable. Nevertheless, migration modules in nationally representative surveys have successfully captured detailed information on reasonably large numbers of migrants in a number of countries.³⁵⁵

Beyond this, some degree of stratified sampling (disproportionate oversampling) of migrant populations within the framework of a broader nationally representative survey holds the promise of extending the usefulness of this approach to additional settings.³⁵⁶

However in Luxembourg this type of instrument has not been used. It is important to notice that the labour force survey for Luxembourg (*enquête par sondage sur les forces de travail*) is an annual or biannual survey done using a representative sample of resident workers who are employed or outside the labour market. The data corresponds to each individual's self-declared situation. In Luxembourg, the EFT is done using about 8 500 households, or about 20 000 individuals. It is done in almost all Member States, which simplifies the comparisons of labour market data. It supplies information about population structure, employment, education and job-hunting. This data presents the advantage of supplying information about the demographic, economic and social characteristics of workers, of unemployed persons and of the inactive population.

³⁵⁴ Santo Tomas and Summers (2009: 15).

³⁵⁵ Santo Tomas and Summers (2009: 19).

³⁵⁶ Santo Tomas and Summers (2009: 19).

The main problem with the Labour Force Survey is the disparity that can be caused by the fact that the persons interviewed for the purposes of the survey must have access to a land-line telephone, because normally the residents have one but not the foreigners that can be considered as temporary workers (i.e., definitive term contracts). In addition the development of the cellular phones had rendered the land lines obsolete so many people do not have a landline phone.

3.2 Recommendations

The principal recommendations identified in the literature are the following. The compilation of statistics on circular and temporary migration depends on how these terms are defined as varying definitions and the methods used to assess will lead to very different results. Given the absence of a single internationally accepted legal definition of what constitutes a circular and temporary migrant, the Commission on International Migration Data for Development Research and Policy finds that the harmonization of international migration data, beyond country and date of birth, and country of citizenship, remains elusive. Their approach requires that the different national definitions are clearly spelled out into a harmonised definition.³⁵⁷

Likewise, it is necessary to define the concepts. In this respect, Bell³⁵⁸ proposes four main dimensions of population movement must be taken into account to quantify temporary and circular spatial behavior

- *Movement Intensities*: overall level or incidence of population mobility; the way in which this varies over time, across space, and between people with differing characteristics points to the forces that encourage, and those that inhibit, mobility.
- *Movement Distance*: mobility is a spatial activity and a key feature of all migration streams. It is affected by the propensity to move declines with increasing distance.

³⁵⁷ Although creating global, harmonized migration data remains the ultimate goal, and the Commission lauds the various initiatives that are underway to bring greater harmonization, it believes that using data collected according to national practices is better than having no information at all (Santo Tomas and Summers 2009: 5).

³⁵⁸ Bell (2000: 5).

- *Population Redistribution*: the most tangible effect of population movements is demographic change, resulting in population growth in some places while triggering decline elsewhere.

- *Networks and Connections*: population movements link cities and regions one to another. At the aggregate level the strength and composition of these flows can provide valuable insights into the role and function of individual regions within the overall structure of the space-economy. They also reflect the cumulative pattern of individual migration careers as people respond to these spatial differentials over their life course.

Then to capture the nature of circular mobility, measures must reflect the *frequency*, the *duration* and the *seasonality* of such moves. Duration and frequency are best considered as additional facets of movement intensity. Seasonality, on the other hand, is a discrete facet of temporary mobility which permeates each of the other four dimensions.³⁵⁹

The data collection process should take place in both countries of origin and destination.³⁶⁰ This requires a high degree of coordination and capacity building to collect, store, analyse, and disseminate migration data. This will allow to measure effects of migration in origin countries and as a result produce national migration data reports.³⁶¹ An important first step in this process of building lasting institutional capacity is the convening of national taskforces in each developing country. Such taskforces bring together national policymakers, statisticians, researchers, and migration specialists to discuss their common interests in having better migration data and to decide which steps should take priority.³⁶²

With respect to census data, we described above that censuses in their actual form do not allow to quantify circular and temporary migration. However, one way to assess the degree of out-migration among permanent migrants is to use census or survey information that compares the size of foreign-born cohorts between two decennial censuses. Yet these estimates do not capture emigration of recent time.³⁶³ The introduction of direct questions on migration into population censuses, such as birthplace, place of residence ‘n’ years ago, or last place of permanent can be refined and extended to provide basic information on international

³⁵⁹ The seasonal variations underpin the very existence of many forms of temporary movement (Bell 2000: 6).

³⁶⁰ Agunias and Newland (2007: 17).

³⁶¹ Santo Tomas and Summers and Summer (2009: 3).

³⁶² Santo Tomas and Summers (2009: 23).

³⁶³ Agunias and Newland (2007: 4).

stocks and flows.³⁶⁴ The principal task is to extend them to cover international migration through categorizing and coding.³⁶⁵

In Luxembourg, there are several administrative databases that can be used for treating migration issues. However, exploiting existing administrative data sources, that often contain rich and poorly utilized information on international movements, is difficult because most of the public databases are not linked to another. It has been recommended to broaden the use of administrative data on visas, work permits, and population registers where available, to greatly enrich understanding of the characteristics of international migrants.³⁶⁶ For doing this, they recommend a closer cooperation between ministries in charge of migration and national statistical offices. Since the information is not disseminated, no country takes full advantage of this storehouse of knowledge to better understand migration processes. Releasing data on visas, border control, residence, and work permits, on consular registers, asylum seekers, and apprehended irregular migrants in particular can offer rich portraits of migrant flows and stocks in fine detail and at minimal additional cost. Although the difficulties to be faced for extracting statistical data from these data sources are real, because of data protection laws, such sources can help produce timely and detailed statistics on movement.

There are tremendous gains from such cooperation. The agencies that regulate migration have rich data and close links to policy formation, and national statistical offices have rigorous statistical expertise, close knowledge of international recommendations on statistical harmonization, and expertise on ways to compile tabulations and micro data while maintaining individual privacy and national security.³⁶⁷

However, there are data protection issues. The technology to count people exists but the systems will need to be devised to filter out the short-term visitors from long-term entrants and leavers.³⁶⁸ The development of biometric databases by governments had permitted to obtain lots of information that can be used to track migration movements but at the same time

³⁶⁴ Black and Skeldon (2009: 4).

³⁶⁵ The problem is that categorizing and coding will increase costs in data entry and poor countries do not have the financial means to cover them (Black and Skeldon 2009: 5).

³⁶⁶ Santo Tomas and Summers (2009: 14).

³⁶⁷ Köhler (2008: 241), Santo Tomas and Summers (2009: 15).

³⁶⁸ Black and Skeldon (2009: 7).

development has been highly controversial because they are seen as exclusive data bases for migrants populations and that they can violate civil liberties.³⁶⁹

Specialized surveys can provide a tool to generate the detailed data required on origins and destinations of migration³⁷⁰, especially if they add specialized modules focusing on migration to existing national labour force, Living Standards Measurement Study surveys, Demographic and Health Surveys, and other ongoing (socioeconomic) survey efforts.³⁷¹ Statistics for international migration can also be generated. The origins, as well as the destinations, of migration in any country are not randomly distributed but highly concentrated in particular areas.³⁷² In the medium to long run, the governments of important migrant origin and destination countries together with international agencies should support a multi-country programme of specialized household surveys focusing on migration in developing countries.³⁷³ Some technical issues remain to be addressed, including working around the possible imperfections in some countries' LFS data, especially in the coverage of non-nationals, and deciding on data storage and interface details to adequately address all countries' requirements for confidentiality and data security.³⁷⁴

A set of particular questions can be integrated into any household survey in order to gather information on linkages between migration and development. Suggested questions are include those on previous residence (length of stay in the current place of residence, place of residence before move, and place of birth), for return migrants migration experience of at least three months inn the past five years, year of most recent migration to another country for work, destination country and place of last migration, length of stay, main occupation in that country, and main occupation before migrating, for currents migrants (family at the country of origin) number of children living outside the household, place of residence of that person, year of migration, occupation at the time of moving to country, highest level of education at the time of leaving, highest level of education today, current occupation, reception of remittances (transfers or gifts in cash) over the course of the last 12 months, how many times

³⁶⁹ Black and Skeldon (2009: 8).

³⁷⁰ Black and Skeldon (2009: 5).

³⁷¹ Bell (2000), Black and Skeldon (2009: 6), Santo Tomas and Summers (2009: 2).

³⁷² Black and Skeldon (2009: 6).

³⁷³ Santo Tomas and Summers (2009: 22).

³⁷⁴ Santo Tomas and Summers (2009: 16).

and amount of remittances, total value of the transfers and cash gifts over the course of the last 12 months.³⁷⁵

Most of the authors consider that it is necessary to increase the public availability of micro data³⁷⁶ and using the macro-level census and survey sources as we have described. Khoo *et al.* had proposed that for solving this issue the authorities have to provide public access to anonymous individual records of international migrants from surveys and administrative data to allow major improvements in the quality of research while maintaining strict confidentiality. This information can include age, education level, sex, and country of origin for a representative sample of individuals entering on each of several broad visa classes.³⁷⁷

³⁷⁵ Santo Tomas and Summers (2009: 20).

³⁷⁶ Black and Skeldon (2009: 18).

³⁷⁷ Santo Tomas and Summers (2009: 16).

4. CONCLUSIONS

Definition

Delving into literature and national policy documents has shown that circular migration is not used as an official concept in Luxembourg, neither in administrative practice, legislation nor migration statistics. Because there is no national definition of circular migration in place based on national legislation, a working definition has been developed and used for the purpose of this study and in order to delineate the concept of circular migration from that of temporary migration. While circular migration has attracted a lot of interest and has stimulated debates among international and EU policy-makers, the used definitions vary importantly, so as to conclude that a standard and unambiguous definition of circular migration is lacking. Furthermore, it is important to note that definitions on circular migration vary depending on whether they are used from an academic, legal or policy point of view, since the concept does not refer to a specific category of migrants with distinct legal status.

The present study defines circular migration as ‘repeated and fluid movements involving *more than one migration cycle* (entry, stay, and return) by the *same groups of migrants* (same persons) while the *periods of stay* in the country of destination are *limited in time*. These movements can be *bidirectional* (movements between the country of origin and country of destination) or *multilateral* (involving more than one country of destination)’. This focus thereby allows to clearly delineate circular migration from permanent migration which involves long-term settlement in the country of destination and from return migration which involves one emigration and permanent return to the home country. Based on legal criteria, as temporary migrants are regarded those foreign-born non-nationals *whose legal status is temporary, regardless of the amount of time they may have actually stayed in a country*.

EU policy debate

The concepts of temporary and circular migration have elicited remarkable interest on the EU level over the last few years. While it can be said that circular migration as such is not a new phenomenon, what is different in the current context is that the discussion focuses on regulated programmes facilitating legal circular migration across large distances and governed

either by the origin country or destination country or usually by both through bilateral agreements, circular migration programmes or other legal instruments. The commonalities and difference between temporary- and circular migration schemes (but also within circular migration schemes themselves) have been described in detail under 1.2.3. As a main commonality, these programmes all put emphasis on managing and regulating migration and the shared objective of temporariness is to be underlined. This particular idea of temporariness guiding migration schemes has been problematized in policy documents and literature, stressing that this concept is based on intention and not on actuality, i.e. it can only be determined ex post.

Best practices for managed temporary and circular migration programmes

A plethora of proposals for ‘best practices’ with regard to the design and implementation of circular and temporary labour migration programmes are put forward in the existing literature and policy-related documents.³⁷⁸ Among those most frequently cited are:

- 1) the need to incorporate circular and temporary migration programmes into a comprehensive immigration policy on the one hand and development policy on the other hand (coherence between different policies): these programmes alone are not a panacea to satisfy the labour market needs in the host country.
- 2) the design and implementation of circular and temporary migration programmes is context-dependent: there is no single best practice and there are no good and bad programmes per se. The practical implementation of a programme (preference for small scale programmes) is important, it needs to be continuously monitored, evaluated and frequently adjusted if necessary.
- 3) continuing financial and political support are more likely if circular migration programmes are: consistent with the development agendas of countries of origin, generate a sense of ownership on the part of both countries of origin and receiving countries and encourage active participation of different stakeholders;
- 4) the development impact of circular migration programmes varies depending largely on three important factors: the socioeconomic conditions in destination countries, the circumstances leading to return (importance of full portability of social benefits and pensions,

³⁷⁸ E.g., Ruhs (2005), Abella (2006), Agunias and Newland (2007), GFMD (2007a), GFMD (2007b), Agunias (2008), Cassarino (2008), Newland *et al.* (2008), Heckmann *et al.* (2009), Hugo (2009).

reintegration programmes and business counseling and training) and whether return is planned, forced, or spontaneous and the characteristics of the migrants themselves (i.e. highly-skilled, trained, well-financed).

Temporary and circular migration to Luxembourg

While circular migration has been debated in EU and international policy circles, circular migration as a concept is rather unknown and has been quasi absent from political and social debates in Luxembourg. To a lesser degree, this also applies to temporary migration.

The historical overview of migration to Luxembourg has shown that (selective) bilateral labour agreements, temporary measures to satisfy national labour demand, have been concluded in the past, but other programmes, explicitly promoting circular or temporary migration have not been in place, with the exception of a few ad hoc- and small scale initiatives.

Consistent with the quasi inexistence of specific temporary or circular migration programmes/schemes, the empirical insight gained from a document analysis on the one hand, and qualitative stakeholder interviews on the other hand, has illustrated the limited relevance of the topic in the context of Luxembourg.

First of all, circular migration is rarely mentioned in policy documents. National stakeholders and migration associations seem to be unfamiliar with the concept or rather skeptical with regard to the implementation of related programmes, stressing the important organizational effort. The government perspective has underlined this concern, so as to conclude that reservation and skepticism with regard to the implementation of circular migration programmes and the real objectives behind remain in place.

There seems to be a weak nexus between circular migration and development. While the importance for coherent policies across policy realms was underlined, a differentiation was made between the objectives of immigration policy and those of cooperation policy.

Consequently, a limited discussion took place on the issue of *brain drain*. Both the lack of debate on circular migration programmes and brain drain was explained by the specific location and the migration patterns of Luxembourg, i.e. large-scale recourse to foreign workers from EU Member States (notably cross-border commuters from the Greater

Region), the percentage of third-country national residents is relatively small and the overwhelming majority of immigrants in Luxembourg do not originate from the poorest countries but from EU countries or highly and medium developed third countries. Due to its very small size, the role Luxembourg could play in the fight against brain drain would be minimal.

As noted, there are hardly any specific programmes that regulate temporary and circular migration of third-country national in place. The few existing programmes or initiatives are small-scale and focus on specific partner countries and co-operation sectors. Cape Verdean authorities were asked to put forward a proposal concerning the design and implementation of a circular migration programme. Other initiatives in the field of research have developed allowing international researchers to come and work or get training in Luxembourg for a limited period of time. However, these initiatives do not explicitly target third-country nationals.

There are no formal programmes in place regulating the recruitment of seasonal workers but the recruitment is predominantly done through informal contacts. National legislation neither provides for a particular status for seasonal labour migrants, be they EU citizens or third-country nationals, nor does it include particular regulations for seasonal work. The procedures will however change once the proposal of 13 July 2010 for an EU Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment will be adopted and transposed into national law.

Starting from the perspective that law is a ‘potential facilitator of policy’, the national legislation was analysed in terms of its *friendliness* to temporary and circular migration. Several provisions could be identified facilitating ‘spontaneous’ temporary and circular migration:

Portability of social security benefits is guaranteed. EU citizens and third-country nationals enjoy from the portability of social security rights when moving to another Member State. If moving to a third country/country of origin, portability (for all people moving between Luxembourg and third-country irrespective of nationality) preconditions the conclusion of bilateral or multilateral social security agreements. Luxembourg signed bilateral agreements

with: Brazil, Canada, Cape Verde, Chile, Croatia, Macedonia, Montenegro, Quebec, Serbia, Tunisia, Turkey, and the United States of America.

Plural nationality: The Law of 23 October 2008 on Luxembourg Nationality introduced multiple citizenship, an option that can be considered conducive to ‘spontaneous’ circular migration as it enables permanent migrants to maintain substantial personal and political attachments to both the country/ies of origin and destination and, given their legal security, allows for repetitive back-and-forth mobility.

Favourable conditions for the temporary settlement of certain categories of temporary migrants: The Immigration Law stipulates that researchers are allowed, if they meet certain conditions such as stable and sufficient resources, appropriate accommodation, and are covered by illness/accident insurance, to immediately bring their family members who are allowed to work. The new regulations considerably speed up the application process for a residence permit.

With regard to national legislations, other measures could be envisaged in order to favour and promote circular migration: 1) strengthen legal status of migrant in country of destination (future return) e.g. by extending period of stay abroad without losing residence permit in Luxembourg (currently 12 months), beneficial return provisions (multi entry, accelerated provisions); 2) facilitate entry and stay provisions for certain categories of workers: accelerated procedures; 3) allow students to stay in Luxembourg to look for work after completion of diploma (currently a signed work contract is a prerequisite for obtaining temporary residence/ work permit)

Finally, it needs to be underlined that circular migration represents one building block of immigration policy. It should thus be regarded relational, representing one of many options of immigration policy and cannot substitute other provisions with regard to permanent or temporary migration.

Improved data collection

The ‘permanent migration paradigm’ according to which migration is understood as a one-time, lasting change of usual residence across borders, has been guiding data collection systems in Luxembourg up until today. This emphasis on permanent migration within data collection has resulted in a neglect of temporary and especially circular migration patterns, thus making an evaluation of potential temporary and circular migration to and from Luxembourg difficult.

Data collection on seasonal workers, one of the most relevant groups of circular workers in Luxembourg, illustrates the difficulty to draw any conclusions from national data on temporary and circular migration.

As there are no legal requirements to register with the social security system for short-term stays, the IGSS data has been of no use for the purpose of this study. While employers are obliged to report the accident insurance of their employees, there is no efficient way to determine the amount of employees that are insured and that are circular or temporary workers, neither are the reasons for stay recorded. There is also confusion with regard to the concepts of data relating to transferred workers and posted workers; a clear definition is missing. Data on resident permits are of no use because the new Immigration Law (Law of Free Movement of Persons and Immigration) introduced new different categories of resident permits. Also, the records of resident permits (until 2010) kept by the Ministry of Foreign Affairs do not differentiate between first issue resident permits and renewals so it is very difficult to know since when the person has been in the country.

In Luxembourg, the number of incoming migrants (*arrivées*) and outgoing migrants (*départs*) are based on the registration of individuals in the General Register of Natural Persons (at the 1 January and 31 December. As such, the figures provide a ‘picture’ of the number of newly registered persons who had not been registered yet at the 1 January of the previous year (migration inflow) and those who were no longer registered compared to the 31 December of the previous year (migration outflows). However, short-term migrants who enter and leave the country within the same civil year and usual residents moving out of Luxembourg for less than twelve months are not included in the present data. This leads to an underestimation of migration flows, particularly of temporary migration. In addition, the reliability of the data depends on the compliance of persons with the legal requirement to register at the Municipal

Office in their locality (*commune*) upon their arrival and de-register before their departure. Also, nationals and migrants alike often fail to de-register when they leave the country.

Several recommendations for the improvement of data collection with regard to temporary and circular migration have been developed and are presented in detail under 3.2. They stress the importance for clear definitions and concepts, data collection that is done in both countries of origin and destination, the introduction of direct questions on migration in population censuses, specialized surveys, a greater cooperation between ministries and national statistical offices and the linking of public databases.

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The objective of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum to Community Institutions, Member States' authorities and institutions, and the general public, with a view to supporting policy-making in the European Union in these areas.

